

JUL 21 1948

07

Law Div.

American Bar Association

Journal

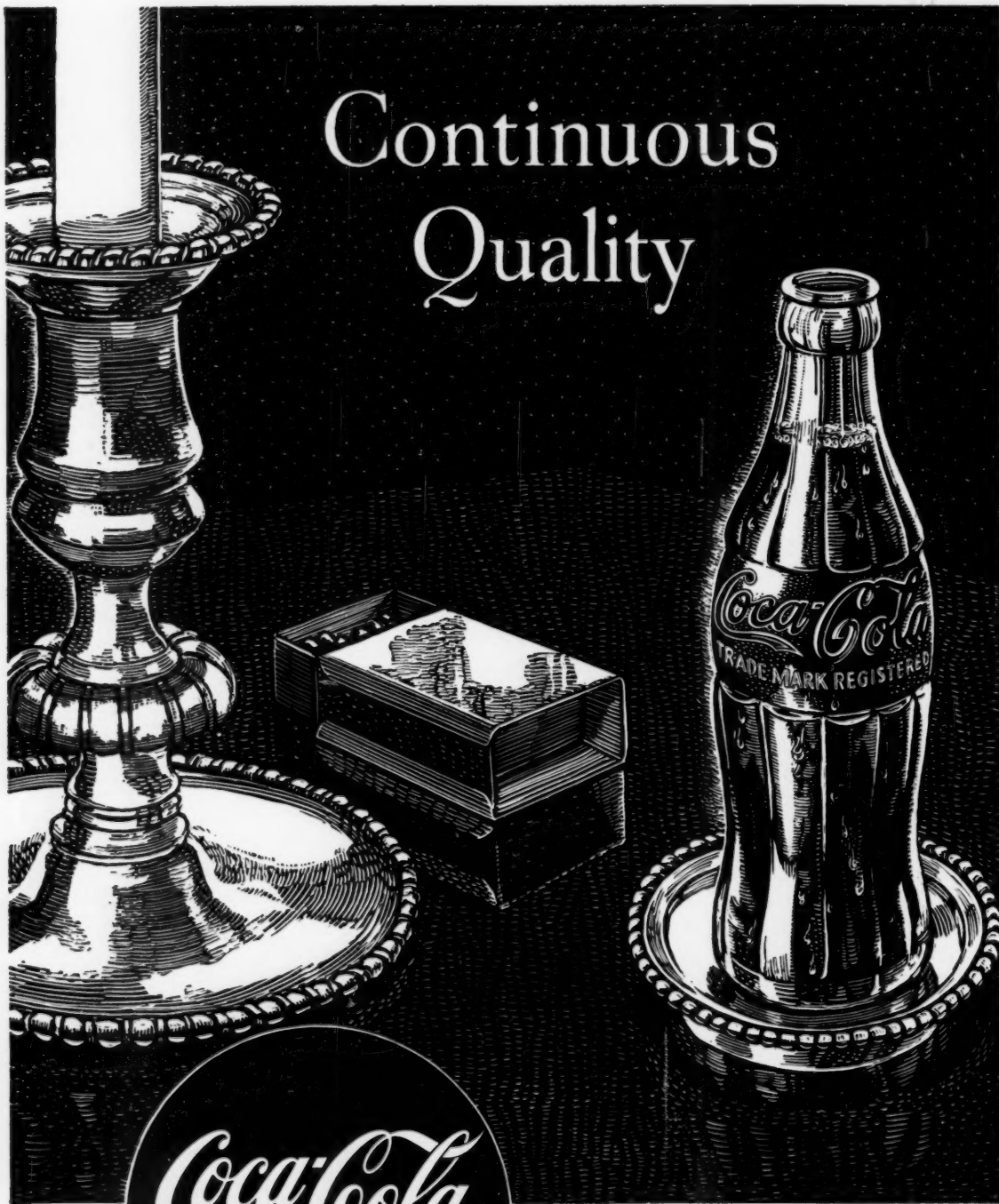
THE LIBRARY OF
CONGRESS
SERIAL 45-170
JUN 28 1948

5

JUNE 1948

	PAGE
EARNINGS AND EXPENSES OF PRACTICING LAWYERS	437
RULE-MAKING FOR NEW JERSEY COURTS	445
CHIEF JUSTICE SIMMONS OF NEBRASKA	450
PRELIMINARY PROGRAM FOR OUR SEATTLE MEETING	471
FUTURE OF DRAFT COVENANT ON HUMAN RIGHTS	475 & 480
"NO LAW BUT OUR OWN PREPOSESSIONS"?	482

Continuous Quality



COPYRIGHT 1948, THE COCA-COLA COMPANY

*Ask for it either way . . . both
trade-marks mean the same thing.*

Contents

JUNE, 1948

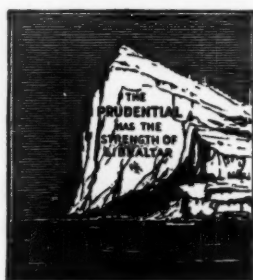
	Article No.	Page No.
Survey of Profession: Steps To Find Facts as to Income and Costs	1	437
A Free Judiciary: American System Contrasted with Soviet <small>Alexander Wiley</small>	2	441
Final Draft of Proposed Federal Condemnation Rule Expected June 1	3	444
Rules for New Jersey Courts: Bar and Public Assist Judicial Rule-Making	4	445
Report on Divorce Laws Acclaimed at National Conference on Family Life	5	448
Robert G. Simmons: Chief Justice of Nebraska Supreme Court	6	450
Venue of Actions: Substitute for Jennings Bill (H.R. 1639) Is Urged <small>Edward J. Devitt and Frederick W. Brune</small>	7	454
U. S. Copyright Act: Anti-Monopoly Provisions Need Some Revision <small>Sam Bass Warner</small>	8	459
A Law Center in Illinois: Plans and Dreams for the "Mind's Eye" <small>Albert J. Harno</small>	9	464
The Corfu Channel Case: Significance of First Ruling by Present Court <small>Manley O. Hudson</small>	10	467
1948 Annual Meeting: First Announcement of Program for Seattle	11	471
Sherlock Holmes: Was Conan Doyle's Famed Detective a Lawyer? <small>Albert P. Blaustein</small>	12	473
The Development of International Law	13	475
The President's Page	14	479
Editorials	15	480
Lawyers in the News	16	488
"Books for Lawyers"	17	491
Review of Recent Supreme Court Decisions	18	497
Courts, Departments and Agencies	19	503
Practising Lawyer's Guide to the Current Law Magazines	20	509
Tax Notes	21	514
Our Younger Lawyers	22	516
Bar Association News	23	519
Views of Our Readers	24	526

ESTATES MAY DWINDLE

Life insurance acquired for the purpose of defraying legal expenses, paying unsettled debts and meeting inheritance taxes is an investment the wisdom of which is dictated by reason.

It means that the estate itself may be left intact for those for whom it is intended.

Ask the Prudential representative.



The PRUDENTIAL
INSURANCE COMPANY OF AMERICA
A mutual life insurance company
 HOME OFFICE NEWARK, NEW JERSEY

1948 ANNUAL MEETING • SEATTLE, WASHINGTON

September 6-9, 1948

The Seventy-First Annual Meeting of the American Bar Association will be held at Seattle, Washington, September 6 to 9, 1948. Further information with respect to the meeting will be published in the Journal from time to time.

HOTEL ACCOMMODATIONS

Headquarters Hotel Olympic (Fourth & Seneca Streets)

Reservations for members will be made in the following Seattle Hotels:

BENJAMIN FRANKLIN (Fifth & Virginia)
 CAMLIN (Ninth & Pine)
 CLAREMONT (Fourth & Virginia)
 CORNELIUS APT. HOTEL (306 Blanchard)
 EXETER (Eighth & Seneca)
 FRYE (Third & Yesler Way)
 GOWMAN (Second & Stewart)
 HUNGERFORD (Fourth & Spring)
 MAYFLOWER (Fourth & Olive Way)

MEANY, EDMOND (E. 45th & Brooklyn; University District)
 MOORE (Second & Virginia)
 MORRISON (509 Third Ave.)
 NEW RICHMOND (308 Fourth Ave., So.)
 NEW WASHINGTON (Space Exhausted)
 ROOSEVELT (Seventh & Pine)
 VANCE (Seventh & Stewart)
 WALDORF (Seventh & Pike)

REGISTRATION FEE

REQUESTS FOR RESERVATIONS FOR HOTEL ACCOMMODATIONS MUST BE ACCOMPANIED BY PAYMENT OF \$5.00 REGISTRATION FEE FOR EACH LAWYER FOR WHOM RESERVATION IS REQUESTED. The Board of Governors solicits the cooperation of the members of the Association in thus facilitating the handling of the registration fee and in partially defraying the increasing expense of the Annual Meeting. In the event that it becomes necessary to cancel a reservation, the registration fee will be refunded, PROVIDED NOTICE OF CANCELLATION IS RECEIVED AT HEADQUARTERS NOT LATER THAN AUGUST 16, 1948.

Explanation of Type of Rooms

(Because of shortage of single rooms, please arrange to share double room with another, whenever possible).

Requests for reservations, together with \$5.00 registration fee, should be addressed to the RESERVATION DEPARTMENT, AMERICAN BAR ASSOCIATION, 1140 NORTH DEARBORN STREET, CHICAGO 10, ILLINOIS.

A single room contains either a single or double bed to be occupied by one person. A double room contains a double bed to be occupied by two persons. A twin-bed room will NOT be assigned for occupancy by one person. A parlor suite consists of parlor and communicating bedroom containing double or twin beds. Additional bedrooms may be had in connection with the parlor.

To avoid unnecessary correspondence, members are requested to be specific in making requests for reservation, stating hotel, First and Second Choice, number and type of room or rooms required, names of persons who will occupy same, definite arrival date, and, if possible, information as to whether such arrival will be in the morning or evening.

As it is not possible to designate definite rates with respect to hotel accommodations, please indicate approximate rate desired, and we will endeavor to comply with your request, if possible.

In This Issue

Finding the Facts About the Income of Lawyers

The Department of Commerce mailed in May a short questionnaire to more than 20,000 lawyers, selected at random throughout the United States, to elicit the basic information as to the practice of law, gross earnings and office expenses of lawyers, their net income before taxes, etc. This was done by the Department's Bureau of Business Economics, in cooperation with the independent Council for the Survey of the Legal Profession. About one lawyer in eight will receive a copy, which he should fill in and return; this means that, on normal probabilities, a few more than 5000 of the 41,218 members of our Association have received a questionnaire. In the interests of the profession, Director Reginald Heber Smith asks that everyone who receives it shall fill it out promptly; he also makes suggestions as to the make-up of the data to be filed. All lawyers will be interested in the contents of the questionnaire, as well as in the data now made public by the Department from its previous interrogation of lawyers as to their income.

Free Men and a Free Judiciary

Before the Bar Association of St. Louis at its annual dinner on April 16, Senator Alexander Wiley, of Wisconsin, Chairman of the United States Senate Committee on the Judiciary, paid tribute to the leadership of the American Bar Association and the diligent efforts of State and local Bar Associations for an independent, non-political judiciary and for methods of judicial selection which will emphasize choice for fitness rather than party service. He endorsed the objectives of the "Missouri

Plan" and other variants of the plan developed and recommended by our Association in 1937, and analyzed the Soviet concepts of law and Courts to show that independence of the judiciary is a keystone of the freedoms which the Western Powers should defend, for themselves and for each other.

Proposed Federal Condemnation Rule in June

The recommendation of the Advisory Committee for a uniform federal condemnation rule (excepting the TVA and the District of Columbia), along lines which have been spiritedly challenged in the profession, is due to be submitted to the Supreme Court June 1, with a view to its transmission to the first session of the 81st Congress next January. This may renew the debate rather than end it.

Bar and People Work On New Court Rules for New Jersey

A striking exemplification of the democratic process in judicial rule-making is taking place in New Jersey, under the Judiciary Article of its new State Constitution and the leadership of Arthur T. Vanderbilt as Chief Justice. The State and local Bar Associations, individual lawyers, and civic groups, as well as the judges of Courts of first instance, had a lot to do with the ideas which went into the early drafts of new rules for the Courts. Now the tentative draft of rules is out; the Bar and the people are really going at them, hammer and tongs. Then the Supreme Court will take June and perhaps part of July to make the final revision, to be promulgated to become effective December 15. As might be expected a lot of interesting ideas are in the new procedural system.

Nation-Wide Attention for Report on Divorce Laws

The forthright discussion and remedial recommendations contained in the report of our Association's Committee which organized the Legal Section of the National (White House) Conference on Family Life, May 6-7, commanded newspaper and public attention in all parts of the United States and elicited much favorable comment. Legislators who undertake to draft laws for remedying the abuses will turn to this objective report, until action has been taken to end present scandals and deficiencies.

Chief Justice Robert G. Simmons and the Nebraska Supreme Court

In our series on State judicial systems and the jurists who head them, our sketch this month is of the Nebraska Courts and the Chief Justice of the State Supreme Court—a jurist who typifies the history and rugged, pioneering spirit of his commonwealth and who has done and is doing yeoman work in our Association.

Venue of Actions Under Federal Employers' Liability Act

Congressman Edward J. Devitt, of the Minnesota Bar, replies to Thomas B. Gay's argument (33 A.B. A.J. 659; July, 1947) for the Jennings bill (H. R. 1639) and offers his own suggestion of remedy for the evils and abuses under the present law and unethical practices. Chairman Frederick W. Brune, of our Association's Committee, comments on Mr. Devitt's proposal. As often, the "areas of agreement" are greatly enlarged by the earnest discussion in our columns.

"Anti-Monopoly" Provisions of the U. S. Copyright Act

Sam B. Warner, Register of Copyrights, member of our Association since 1922, contributes an informative analysis of provisions of the American statute of 1909 and of corresponding laws in other countries, and suggests that some provisions of

(Continued on page VII)

Assisting Lawyers Everywhere

Since 1892 lawyers everywhere have been depending on the CT System for assistance in such matters as—

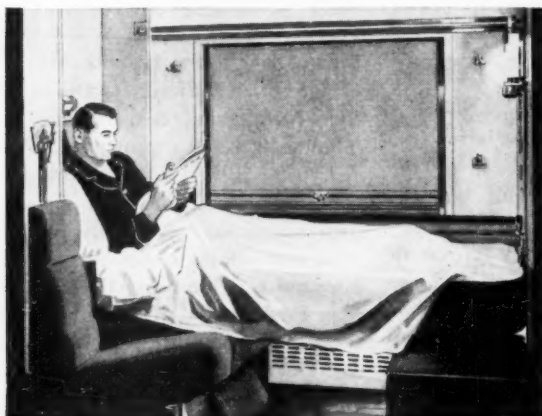
- Organizing corporations in any or all states outside their own.
- Filing amendments, certificates of merger or certificates of withdrawal in any or all states.
- Handling all details of filing, recording or publishing—if required—in any or all states.

There is a CT office within telephone distance or overnight mail.

CT SYSTEM

The Corporation Trust Company
CT Corporation System
and Associated Companies

Albany 6	4 S. Hawk Street	Jersey City 2	15 Exchange Place
Atlanta 2	57 Forsyth Street, N. W.	Los Angeles 12	310 S. Spring Street
Baltimore 2	10 Light Street	Minneapolis 1	409 Second Avenue S.
Boston 9	10 Post Office Square	New York 5	120 Broadway
Buffalo 3	202 Main Street	Philadelphia 9	123 S. Broad Street
Chicago 4	208 S. La Salle Street	Pittsburgh 22	535 Smithfield Street
Cincinnati 2	441 Vine Street	Portland, Me. 3	57 Exchange Street
Cleveland 14	925 Euclid Street	San Francisco 4	220 Montgomery Street
Dallas 1	1309 Main Street	Seattle 4	1004 Second Avenue
Detroit 26	719 Griswold Street	St. Louis 2	314 North Broadway
Dover, Del.	20 Dover Green	Washington 4	1229 E. St. N. W.
Wilmington 99	100 West 10th Street		



Brand-new ROOM CARS

TRAVEL TO and from the American Bar convention in Seattle next September in the brand-new streamlined Pullmans operating on the **North Coast Limited**.



May I reserve your space soon?

E. E. NELSON

Passenger Traffic Manager

306 NORTHERN PACIFIC RAILWAY

St. Paul 1, Minnesota

to the Lawyers.

**PRACTICING law
and ECONOMY
you can SAVE**

by

- ★ Purchasing fine used books, even the latest publications, and trading your unwanted books for
- ★ those you need.

Lawyers Service Co.

500 N. 19th St. Ce 1673
St. Louis, Mo.

American Bar Association 1947-1948

President TAPPAN GREGORY, 105 South LaSalle Street, Chicago 3, Illinois • Chairman, House of Delegates HOWARD L. BARKDULL, Union Commerce Building, Cleveland 14, Ohio • Secretary JOSEPH D. STECHER, Toledo Trust Building, Toledo 4, Ohio • Treasurer WALTER M. BASTIAN, National Press Building, Washington 4, D. C. • Assistant Secretary JAMES P. ECONOMOS, 105 W. Madison Street, Chicago, Illinois • Executive Secretary OLIVE G. RICKER, 1140 North Dearborn Street, Chicago 10, Illinois

Board of Governors

The President,
The Chairman of the House of Delegates,
The Secretary,
The Treasurer,
CARL B. RIX, *Last Retiring President*, Wells Building, Milwaukee 2, Wisconsin } *Ex Officio*
WILLIAM L. RANSOM, *Editor-in-Chief of the American Bar Association Journal*, 33 Pine Street, New York 5, New York

First Circuit HENRY C. HART, Hospital Trust Building, Providence 3, Rhode Island
Second Circuit DEANE C. DAVIS, National Life Insurance Company, Montpelier, Vermont
Third Circuit WILLIAM CLARKE MASON, 123 South Broad Street, Philadelphia 9, Pennsylvania
Fourth Circuit CHARLES RUZICKA, First National Bank Building, Baltimore, Maryland
Fifth Circuit CODY FOWLER, Citizens Building, Tampa 2, Florida
Sixth Circuit MITCHELL LONG, Hamilton National Bank Building, Knoxville 02, Tennessee
Seventh Circuit ALBERT B. HOUGHTON, 152 West Wisconsin Ave., Milwaukee, Wisconsin
Eighth Circuit JAMES G. MOTHERSEAD, Murphy Building, Scottsbluff, Nebraska
Ninth Circuit LOYD WRIGHT, 111 West Seventh Building, Los Angeles 14, California
Tenth Circuit ALVIN RICHARDS, Pure Oil Company, Tulsa Oklahoma

Court and Fiduciary Bonds

WHEN you want them!

WHERE you want them!

HOW you want them!

CALL THE LOCAL



REPRESENTATIVE

**FIDELITY AND DEPOSIT
COMPANY OF MARYLAND**

HOME OFFICE: Baltimore, Md.

AFFILIATE: AMERICAN BONDING COMPANY OF BALTIMORE

STATE ADMINISTRATIVE LAW

Announcement
of
ESSAY CONTEST
conducted by
SECTION OF ADMINISTRATIVE LAW
AMERICAN BAR ASSOCIATION
RULES FOR CONTESTANTS

Subject

Each contestant will write about
State Administrative Law of the
State in which he has been admitted
to practice and practices law.

Cash Prize

One Thousand Dollars (\$1,000)

Final date for submissions

Extended from November 1, 1948,
as originally planned, to
December 31, 1948.

To whom essays submitted

Secretary of Administrative
Law Section, Miss Patricia H.
Collins, Assistant Solicitor
General's Office, Washington 25, D. C.

Eligibility

Contest will be open only to members of American Bar Association in good standing, including new members elected prior to December 1, 1948 (except officers of the Section and members of its Council, Chairman of the Contest Committee, and State Chairmen) who have paid their annual dues to the Association for the current fiscal year.

No essay will be accepted if previously published. All rights and title to essays submitted must be deemed the property of the Section. Any copyright to an essay must be assigned to the Section.

Each essayist should review and analyze the Administrative Law of his State, both legislative and as evidenced by judicial decisions. All statements should be accompanied with citations to sources. Comparisons with Administrative Law of other jurisdictions may be made, but the theme of each essay must be the Administrative Law of the particular State concerning which it is written.

Each essay must be restricted to four thousand words including quoted matter and citations in the text. Footnotes or notes following the essay shall not be included in the computation of words but excessive use of such material may be penalized by the judges of the contest. Clearness, brevity of expression and thoroughness of analysis will be taken into consideration.

Inquiries concerning the contest should be addressed to Omar C. Spencer, Chairman, Contest Committee, Yeon Building, Portland 4, Oregon.

GEORGE ROSSMAN, Chairman,
Section of Administrative Law,
American Bar Association.

Salem, Oregon.

Marked Copy Service Now Available

Members who wish to bring particular articles in the *Journal* to the attention of non-members can now arrange to have marked copies of the *Journal* sent from Chicago.

We are glad to make this service available, because the effectiveness of the *Journal's* work for the profession and the public depends considerably on many of its articles, editorials, etc., being read by non-members.

If you send in the names and addresses and indicate as to each the article you wish us to mark for you, we shall be glad to send copies of the current issues, at \$1.00 per copy to cover the special handling. If you wish copies sent to you for marking and mailing by you, they will be supplied at 50 cents per copy.

A BINDER

for your

JOURNAL

•

\$2.25 postpaid

Check must be mailed
with order

American Bar Association Journal

1140 North Dearborn Street, Chicago 10, Ill.

(Continued from page III)

the U.S. Act need re-examination and possible revision, in the light of all that has taken place since 1909 as to authors' rights and their protection, as to magazines, newspapers, books, dramas, musical compositions, wire recording, phonograph records, mechanical reproductions, etc. A lot of timely and useful information is in this documented article.

University of Illinois Plans a Law Center at Urbana

9

Dean Albert J. Harno, of the College of Law at the University of Illinois, writes interestingly of the beginnings of plans and program for a Law Center—an institution which will be developed to work toward the recapturing of the advantages which were in the apprenticeship system in legal education in the Inns of Court and in earlier America. Present practical steps, as well as hopes and dreams, are described in a way that reflects Dean Harno's sure-footed thinking ahead for our profession.

SoundScriber announces new, exclusive... discopying!



Now . . . you may make duplicate discs of anything you record . . . right at your desk. Important telephone calls, special instructions to department heads, confidential instructions to field personnel . . . right on your new SoundScriber . . . and every one is a permanent, accurate record.

This automatic DISCOPYING feature is now available on all SoundScriber dictation machines . . . at no additional cost!

Send the coupon now, for a demonstration of this revolutionary development.

SOUND/SCRIBER

Trade Mark
ELECTRONIC DICTATING AND RECORDING EQUIPMENT

The SOUNDScriber CORPORATION, Dept. AB-5, New Haven 4, Conn.

Send me information on DISCOPYING.

NAME _____
ADDRESS _____
CITY _____ STATE _____

World Court Resumes Its Judicial Activity

10

A heartening event is that after an interruption lasting eight years because of the war and the post-war preference of the leaders of some nations for discussions at the political level, the World Court has begun the hearing of its first case and has rendered its first judgment since its reorganization in 1945-46. Former Judge Manley O. Hudson interestingly discusses the significance of the event and the ruling.

Was Sherlock Holmes Educated as a Lawyer?

12

In creating the character of the famed detective of Baker Street, London, did A. Conan Doyle bring into being a fictional sleuth who had been trained in the law albeit he had not practiced as a barrister or solicitor? Albert Blaustein answers in the affirmative and gives a diverting analysis of the evidence, in a short article which should delight "Sherlock Holmes fans" among our readers.

LAW OFFICE ORGANIZATION

By Reginald Heber Smith
of the Boston Bar

Due to popular demand
our third reprinting of
this pamphlet is now
available. Price 50 cents.

Copies may be secured
**AMERICAN BAR
ASSOCIATION JOURNAL**
1140 North Dearborn Street
Chicago 10, Illinois

NOW!

**VISTA
DOME**

OBSERVATION-DECK
CARS



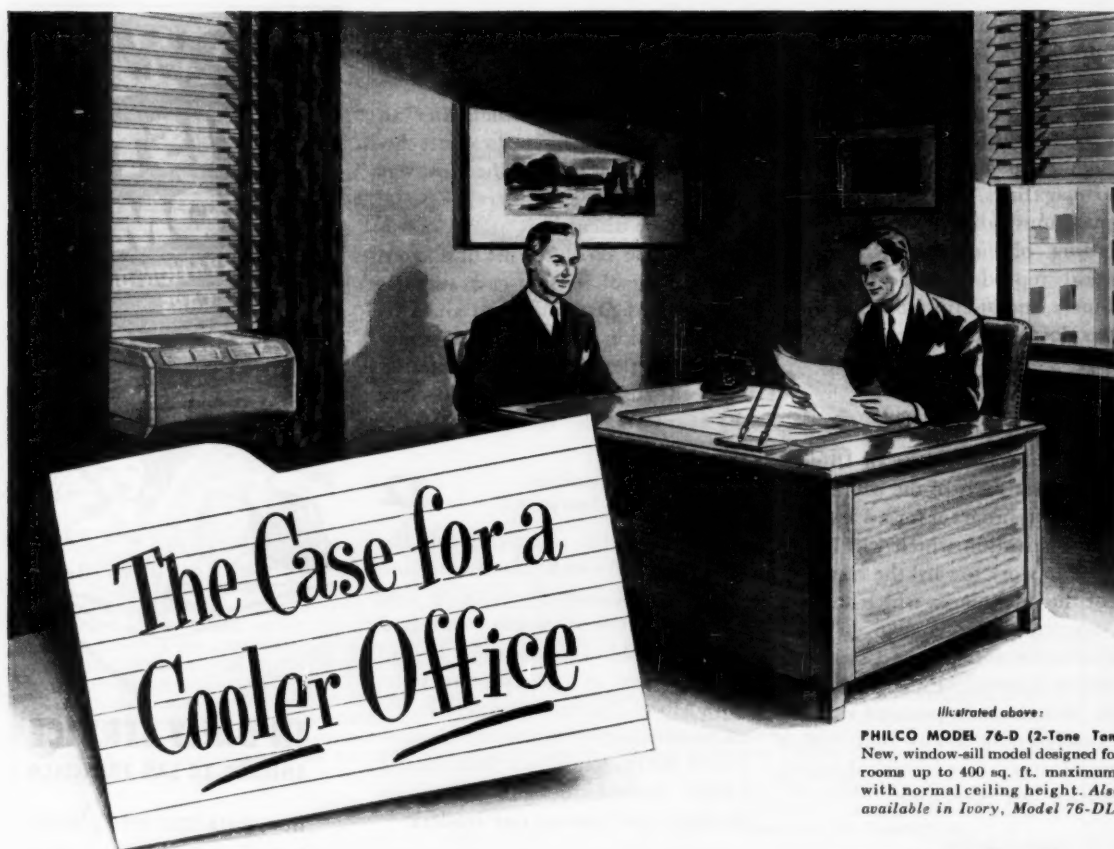
IN DAILY SERVICE CHICAGO TO SAN FRANCISCO

Now, more than ever . . . going to or from California . . . you'll want to enjoy Western Pacific's Diesel-Powered Transcontinental Trains. These trains are now equipped with Vista-Dome, Observation-deck Coaches. It's America's No. 1 Travel Treat. You go through (not around) the mighty Colorado Rockies and California's wonderful Feather River Canyon in **day-light** hours. Through Pullmans Chicago, Omaha, Denver, Salt Lake City and San Francisco. No extra fare.



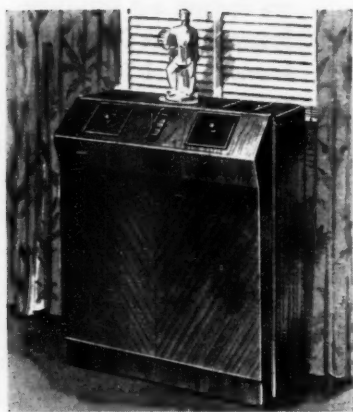
For information call, or write
JAMES B. WARREN
Asst. General Passenger Agent
105 W. Adams Street
Chicago 3, Illinois

JOSEPH G. WHEELER
General Passenger Agent
526 Mission Street
San Francisco, California



Illustrated above:
PHILCO MODEL 76-D (2-Tone Tan)
New, window-sill model designed for
rooms up to 400 sq. ft. maximum,
with normal ceiling height. Also
available in Ivory, Model 76-DL.

Old Sol versus Philco Air-Conditioning



PHILCO MODEL 91-C. A new, single-room air-conditioner in a beautiful walnut console of matched grain. Ample power to serve offices up to 500 sq. ft. maximum, with normal ceiling height. Ventilation independent of cooling lets you pump out smoke and stuffy air, even in Winter. Inexpensive, easily replaceable filter. Console is 39 $\frac{1}{2}$ " high, 32 $\frac{1}{2}$ " wide, 19 $\frac{1}{4}$ " deep.

A Philco Single-Room Air-Conditioner more than earns its cost in banking and law offices during hot, sticky weather. It cools your body, refreshes your mind, makes you forget the weather, even when the thermometer is pushing the top nineties. It muffles street-noises; removes smoky, stuffy air; screens out dust and air-borne pollens; keeps papers from blowing off desks; gives you, in brief, the weather you want at the turn of a knob the year around. Clients and customers appreciate such comfort. There are models that fit on a window-sill, and consoles that sit on the floor. See your Philco dealer.

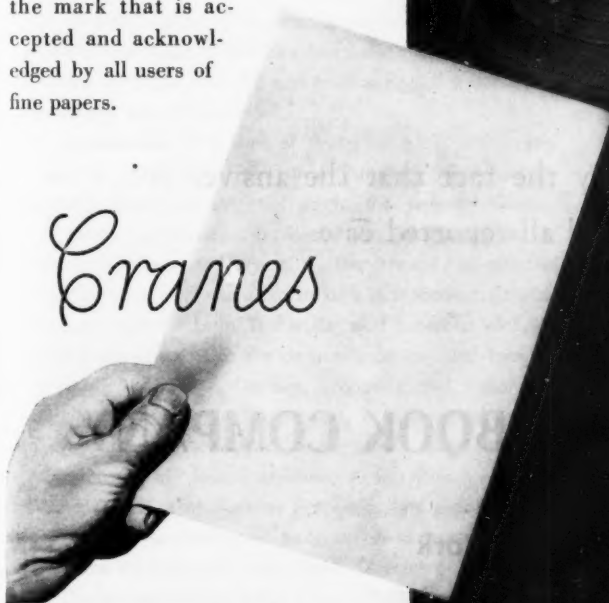
Why Simmer in Summer?

PHILCO SINGLE-ROOM
AIR-CONDITIONERS

Crane's.....the accepted Mark in fine papers

The casting of bells has enlisted the skill of many a founder whose pride in his work has been expressed in name or initials struck in the metal; or with such a rare and rhythmic inscription as: "Thomas Newman cast me new in 1732."

Pride of craftsmanship dominates production in the Crane mills, as it has through all our 147 years of making papers from cotton and linen fibres only, the most enduring materials from which paper can be made. It is expressed in the watermark of Crane, found in every sheet and seen when the paper is held against the light. We suggest you look for the mark of Crane when next you buy paper for your social, personal or business needs. It is the mark that is accepted and acknowledged by all users of fine papers.



**CRANE'S
FINE PAPERS**

MADE IN DALTON, MASSACHUSETTS
SINCE 1801

Problem:

A lawyer must advise a client or prepare a brief.

Solution:

He reaches for CORPUS JURIS SECUNDUM.

Result:

Confidence inspired by the fact that the answer is
based on all the law and all reported cases.

THE AMERICAN LAW BOOK COMPANY

Brooklyn 1, New York

Su

St

■ The
May 1
a bro
their v
ing b
earnin
net ec
lawye
norma
memb
the in
is rep

The
pursue
Depar
in the
the pr
close
for th
all of
the q
direct
the S
the si
Depa
sent
questi
for th

Dir
receiv
all hi
and f
which
count
of ou

Survey of Profession:

Steps To Find Facts as to Incomes and Costs

■ The United States Department of Commerce mailed about May 1 a short questionnaire to more than 20,000 lawyers on a broad coverage throughout the United States, asking for their voluntary cooperation and help to the extent of supplying basic information about the practice of law, the gross earnings of lawyers, their office costs and expenses, and their net earnings before taxes, etc. This means that about one lawyer in eight received the questionnaire and that, assuming normal probabilities as to the random selections, about 5000 members of our Association have been asked to respond. For the interest of those who did not receive one, the document is reproduced with this article.

The questionnaire is a part of the great plan, undertaken pursuant to instructions from the Congress, whereby the Department ascertains statistics as to the national income in the various professions, businesses and employments. In the present inquiry as to lawyers, the Department has acted in close cooperation with our Association's independent Council for the Survey of the Legal Profession, and accepted virtually all of its suggestions as to the desirable content and form of the questions. Edward F. Denison, economist and statistician directly in charge for the Department, is also consultant for the Survey as to the economics of the legal profession. Over the signature of M. Joseph Meehan, Acting Director of the Department's Office of Business Economics, the circular letter sent to lawyers quoted principally an endorsement of the questionnaire by Reginald Heber Smith, Director of the Survey for the Council headed by Judge Orie L. Phillips as Chairman.

Director Smith earnestly urges that every lawyer who receives the questionnaire shall consider himself a trustee for all his brethren of the Bar and answer the questions carefully and fully, so that the result will be obtaining of reliable data which will accurately reflect the practice of law in our country. This is indispensable to the Survey and to the future of our profession; the action of the Department is a notable

tribute to the Council and to the high standing of our Association as the representative body of the legal profession. The Department assures each recipient that the information furnished will be used only in combination with other data to calculate over-all summary figures, such as totals and averages. The questionnaires themselves will not be available to any other agency. To assure complete anonymity, the Department does not ask that those who respond shall give their names; no filled-in questionnaire will be in any way identifiable as to the person who returned it. Partners and lawyers in every law office are asked to do what they can to see to it that the questionnaire is filled in by every person in that office who receives it, regardless of whether or not any other person in the same office (either partner or employee) received a questionnaire.

Director Smith gives here considerable information for guidance in responding to the questionnaire. With its questionnaire and letter, the Department sent out an article which reflected the results of its previous inquiry concerning the profession, made six years ago but hardly in as satisfactory form as the present questionnaire. In our July issue we shall publish and comment on much more of the data from the 1942 inquiry than we have space for in this issue.

Aside from the usefulness of the statistical data to the Director and Council of the Survey, a primary purpose of the Department's present studies is stated to be to gauge the effects of the war and the price increases upon the incomes (both in dollars and real income) of the more important independent professions. The period covered by the present questionnaire is 1943 through 1947. Data from the 1942 study showed that the gross income of the profession and the average earnings of lawyers was not at all keeping pace with the increased costs of living and law office operation or with the "take-home" pay of workers for whom government and labor organizations have been active.

■ The present inquiry and study by the Department of Commerce undoubtedly constitutes the most important project ever undertaken by government in aid of the profession of law. The Department says about it:

The current study by the Department is being conducted with the cooperation of the Survey of the Legal Profession, an independent organization sponsored jointly by the Carnegie Corporation and the American Bar Association. This organization is now engaged in a broad five-year study of the status of lawyers in the United States, the first comprehensive study of its kind in the country.

The Department's letter to recipients of the 1948 questionnaire quotes Director Reginald Heber Smith as saying for the Council:

It is a pleasure to have the opportunity of endorsing the purpose of this questionnaire. Recently, I accepted the task of directing the Survey of the Legal Profession (an independent project sponsored jointly by the Carnegie Corporation and the American Bar Association), which is now engaged in making a broad study of the status of lawyers in America. In that connection I have come to realize only too well the utter lack of current, reliable information on the economic status of lawyers. Accordingly, I urge all lawyers to answer the accompanying questionnaire to the best of their ability. Your cooperation will go far towards filling a long-felt need, and will represent a genuine contribution on your part to the welfare of our profession.



Carlyle Studios

REGINALD HEBER SMITH

Director of the Survey of Legal Profession

U.S. DEPARTMENT OF COMMERCE OFFICE OF BUSINESS ECONOMICS SURVEY OF THE LEGAL PROFESSION		These data are confidential and are for statistical purposes only. Results will be used only together with information received from other lawyers to calculate such over-all figures as totals, averages, and percentages. NO SIGNATURE OR OTHER IDENTIFYING INFORMATION IS REQUESTED OR DESIRED.	CONFIDENTIAL		
1. TO WHAT EXTENT WERE YOU ENGAGED IN LAW WORK IN 1947? (Check only one) <input type="checkbox"/> a. FULL-TIME LAWYER; <input type="checkbox"/> b. PART-TIME LAWYER; <input type="checkbox"/> c. ENGAGED EXCLUSIVELY IN NONLEGAL WORK; <input type="checkbox"/> d. RETIRED LAWYER					
2. CHECK TYPE OF WORK FROM WHICH YOU RECEIVED THE LARGEST PORTION OF YOUR INCOME IN THE FIELD OF LAW DURING 1947. (Check only one) <div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <input type="checkbox"/> a. IN PRACTICE WITHOUT PARTNERS <input type="checkbox"/> b. PARTNER IN A LAW FIRM <input type="checkbox"/> c. SALARIED LAWYER IN A LAW FIRM </div> <div style="width: 30%;"> <input type="checkbox"/> d. SALARIED LAWYER IN A NONLEGAL PRIVATE INDUSTRY <input type="checkbox"/> e. SALARIED LAWYER IN A LABOR ORGANIZATION <input type="checkbox"/> f. SALARIED LAWYER IN OTHER ORGANIZATION (CHARITABLE, RELIGIOUS, ETC.) </div> <div style="width: 30%;"> <input type="checkbox"/> g. JUDGE <input type="checkbox"/> h. NONJUDICIAL SALARIED GOVERNMENT LAWYER (FEDERAL, STATE, CITY, ETC.) </div> </div>					
3. IN WHAT CITY (OR TOWN) AND STATE DID YOU RECEIVE THE LARGEST PORTION OF YOUR INCOME IN THE FIELD OF LAW IN 1947? CITY OR TOWN _____ STATE _____					
4. AGE ON LAST BIRTHDAY _____		5. NUMBER OF YEARS ENGAGED IN LEGAL WORK _____			
6. IF YOU ENTERED LAW WORK SINCE JANUARY 1, 1943, GIVE THE MONTH AND YEAR YOU STARTED SUCH WORK: MONTH _____ YEAR _____					
7. IF YOU WERE A MEMBER OF THE ARMED FORCES SINCE JANUARY 1, 1943, WHEN DID YOU ENTER THE ARMED FORCES? MONTH _____ YEAR _____ WHEN WERE YOU DISCHARGED? MONTH _____ YEAR _____					
NOTE: LAWYERS IN PRACTICE EITHER WITH OR WITHOUT PARTNERS SHOULD FILL IN ALL THE ITEMS THAT FOLLOW ON THIS PAGE AND THE NEXT. MEMBERS OF PARTNERSHIPS WHO RECEIVE THIS QUESTIONNAIRE SHOULD (WHERE CALLED FOR) GIVE INFORMATION FOR THE FIRM AS A WHOLE, REGARDLESS OF WHETHER OR NOT OTHER PARTNERS IN THE FIRM RECEIVED A QUESTIONNAIRE. ATTORNEYS ENGAGED SOLELY AS SALARIED EMPLOYEES THROUGHOUT ANY CALENDAR YEAR BETWEEN 1943 AND 1947 SHOULD FILL IN ONLY ITEMS 13 AND 14 FOR THE PARTICULAR YEAR OR YEARS OF SALARIED EMPLOYMENT. DATA ARE DESIRED FOR AS MANY OF THE YEARS LISTED BELOW AS POSSIBLE. HOWEVER, IF YOU CANNOT SUPPLY THE FIGURES FOR ALL YEARS, PLEASE GIVE INFORMATION FOR AS MANY YEARS AS YOU CAN. THE TERM "firm" includes a lawyer in practice without partners as well as LAWYERS PRACTICING AS PARTNERS.					
ITEM	1943	1944	1945	1946	1947
8. Number of members in your law firm, including yourself. (Exclude lawyer-employees and other employees. If you practiced without partners, enter "1".)					
9. GROSS INCOME of your law FIRM, regardless of whether you practiced with or without partners. (INCLUDE all retainers, legal fees, and fees as executor, trustee, receiver, etc. EXCLUDE income from investments and outside businesses.)					
10. EXPENSES of your law FIRM, regardless of whether you practiced with or without partners. (INCLUDE salaries and wages paid to lawyer-employees and all other employees, office rent, cost of materials and supplies other than long-time equipment, depreciation on—but not original cost of—long-time equipment, and miscellaneous legal expenses. EXCLUDE withdrawals and "salaries" of partners or individual practitioners for personal use, personal and family expenses, and income taxes.)					
11. NET INCOME of your law FIRM, BEFORE INCOME TAXES. (Item 11 equals item 9 minus item 10.)					
12. NET INCOME, BEFORE INCOME TAXES, OF THE PERSON ANSWERING THIS QUESTIONNAIRE from practice as an individual practitioner or as a partner in a law firm. (If you practiced without partners, items 11 and 12 will be identical. If you were a partner in a firm, enter YOUR SHARE of the net income shown in item 11, whether actually withdrawn from the partnership funds or not.)					
13. SALARY RECEIVED as a lawyer-employee, BEFORE DEDUCTIONS for income taxes, social security, bonds, etc. (Exclude income received as a member of the Armed Forces.)					
14. TOTAL NET INCOME FROM ALL LEGAL WORK, BEFORE INCOME TAXES. (Equals the sum of items 12 and 13.)					

PLEASE CONTINUE ON REVERSE SIDE

FIRST PAGE OF THE QUESTIONNAIRE

Explanation of Terminology Used in the Questionnaire

Difficulties were of course inherent in working out the plans for such a trail-blazing inquiry, to make it likely that 20,000 lawyers practicing law in all manner of communities would prepare their data and make their responses on a fairly comparable basis. As no standard terminology for such a questionnaire for lawyers is available, the Department and the Council endeavored to establish an acceptable terminology by using words and terms in the sense in which lawyers commonly use them. Concerning this Director Smith advises the JOURNAL:

For example: To an economist any

lawyer who is not on salary is in "independent practice"; but to the Bar the phrase often suggests a lawyer practicing alone in contradistinction to lawyers practicing in large partnerships. On the first page of the questionnaire it will be seen that in Item 2 we have used the phrase "in private practice". In Item 2d the Department has (as it did in its 1942 questionnaire) used the phrase "Salaried Lawyer in a Non-Legal Private Industry". To an economist, a law office is "a private industry". What the question really refers to is a lawyer receiving a salary from any business organization (corporation, bank, insurance company, etc.) other than a law firm.

The phrase "law firm" is used by lawyers somewhat ambiguously in their ordinary conversation. Of course, a "law firm" includes a partnership; but a lawyer with no partners who em-

NOTE: LAWYERS IN PRACTICE EITHER WITH OR WITHOUT PARTNERS SHOULD FILL IN ALL THE ITEMS BELOW. Members of partnerships who receive this questionnaire should give information relating to the firm as a whole, regardless of whether or not other partners in the firm received a questionnaire. ATTORNEYS ENGAGED SOLELY AS SALARIED EMPLOYEES THROUGHOUT ANY CALENDAR YEAR BETWEEN 1943 AND 1947 SHOULD NOT FILL IN ANY OF THE ITEMS BELOW FOR THE PARTICULAR YEAR OR YEARS OF SALARIED EMPLOYMENT. The term "employee" excludes the individual practitioner himself and all partners.

ITEM	1943	1944	1945	1946	1947
15. Total annual salaries and wages PAID to ALL employees. (If you were a member of a partnership, enter the pay received by all employees—but not the partners—before deductions for taxes, social security, bonds, etc. If you practiced without partners, and shared the services of any employee with others, enter only your share of the person's pay.)					
16. Total annual salaries and wages PAID to FULL-TIME employees. (A full-time employee is one who, when employed, normally worked the full number of hours of the work week.)		MAKE NO ENTRIES IN THIS SHADED SPACE			
17. Total annual salaries and wages PAID to PART-TIME employees. (Item 17 should equal item 15 minus item 16.)					
18. Average number of ALL employees on the firm's payroll during the year: lawyers, secretaries, clerks, etc. (A person who worked 12 months during a year—either full time or part-time—is counted as "1". A person who worked only 3 months is counted as "1/4".)					
19. Average number of FULL-TIME employees on the firm's payroll during the year.		MAKE NO ENTRIES IN THIS SHADED SPACE			
20. Average number of PART-TIME employees on the firm's payroll during the year. (Item 20 should equal item 18 minus item 19.)					
21. Total annual office rent paid in 1947. (If you were a member of a partnership, enter the rent paid for all the partnership office space. If you practiced without partners, and shared office facilities—such as a reception room, library, etc.—enter only your share of the total office rent.)					
22. It is highly important to know how much money individuals, as consumers, spend for personal legal services. It is very difficult to get such data from the consumers—your clients—themselves. Distinguishing as well as you can between (a) fees paid to you by individuals for personal legal services and (b) fees and retainers paid to you by businessmen, corporations, and other organizations for legal services rendered for the client's business, WHAT PERCENT OF YOUR FIRM'S TOTAL GROSS INCOME (SHOWN IN ITEM 9), ACCORDING TO YOUR BEST ESTIMATE, WAS PAID BY INDIVIDUALS FOR PERSONAL LEGAL SERVICES?					

IF ANY APPLICABLE ENTRY SPACES HAVE BEEN LEFT BLANK, PLEASE INDICATE IN THOSE SPACES WHETHER THE DATA ARE "NOT AVAILABLE" (IN WHICH CASE ENTER "NA") OR WHETHER THE ENTRY SHOULD BE "ZERO" (IN WHICH CASE ENTER "0").

Form approved by Bureau of the Budget pursuant to Federal Reports Act of 1942.

SECOND PAGE OF THE QUESTIONNAIRE

employs several young members of the Bar often refers to his group as his "law firm". In this questionnaire, "law firm" includes both.

"Practicing alone" is a phrase that can lead to confusion. Sometimes it signifies a lawyer who has no partners even though he employs other lawyers; sometimes it means that he literally is alone and has no legal association at all—what in medicine is called "solo practice".

Helpful Observations for Preparation of Responses

The following observations by Director Smith may help those who do receive questionnaires:

A. If you were on a salary, you will not answer 8, 9, 10, 11 or 12, but only 13 and 14. Ordinarily the answers to Items 13 and 14 will be identical.

B. If you were on a salary in 1943 and 1944 but became a partner in 1945, you will answer only 13 and 14 for 1943 and 1944; but for the years 1945, 1946 and 1947 you will answer 8, 9, 10, 11, 12 and 14.

C. If you became a partner in the middle of 1945, part of your income of that year would have come from salary, and so you will answer 13; part of your income would have been income as a partner, and so you will also answer 8, 9, 10, 11 and 12. In this case Item 14 will be the total of Items 12 and 13.

D. If you had partners you will answer all items except 13. Normally, the answers to 12 and 14 will be identical.

E. If you practiced without partners and whether or not you had some lawyers in your employ, you will answer 8, 9, 10, 11, 12 and 14. Item 14

would be the same as 12 unless, during the years 1943-47, you had shifted your status from being a lawyer on salary to setting up your own law office.

You are not asked to report your income taxes paid. We would have liked to secure that information. The American public needs to be told what the lawyer's "take home" pay is after he has paid his income taxes. Regrettably we abandoned the question because income taxes are based on all kinds of income, including income from savings, investments, capital gains, etc. We hope that, with the cooperation of the United States Treasury, we can figure out from Item 12 what the typical "take home" pay of the typical lawyer (married and two dependents) would be after taxes on income earned from law practice.

The second or reverse page of the questionnaire is much shorter than it will appear to you to be at first glance. It consists of only eight items, and as to six of them we persuaded the Department to ask information only for the one year 1947.

Questions 15 to 20 relate to employees and wages and may not seem important to you. They are, however, of genuine importance to the government because they tie in to other studies now being made by the Department of Commerce.

Question 22 is very important to us. It is an effort to find out how much of the lawyer's income comes from fees paid him by individuals in contradistinction to retainers and fees paid by businesses, corporations, etc. It is a first effort to find out how much or how little of an item legal services constitute in the budget of the consumer. The data cannot be obtained



ORIE L. PHILLIPS

Chairman of the Council, Survey of Legal Profession

from the individual clients. It can come only from the lawyers. The question merely asks your best opinion as to the *percentage* of your gross income that is earned by you through legal services rendered by you to individuals as to their personal affairs and problems. As to the medical profession, information of this sort exists in abundance. We must begin to obtain comparable data as to our own profession.

The Survey hopes that, a little later on, State Bar Associations in different parts of the country will send this questionnaire to all of their members.

Data Are Greatly Needed Because of Changed Conditions Since 1942

Since 1942, the conditions in our country have changed radically. How far these profound social changes may have affected the practice of law we do not know; no data on the economic condition of lawyers generally has been obtained since 1942. That is why the present questionnaire is so important.

Our profession is proud of the function it performs and of the service it renders to clients and the public. We believe that the more the American people know about their lawyers the better it will be for the people and for ourselves.

In accordance with our professional standards we wish to give to the American people such factual data as we believe to be reliable because it has been painstakingly and honestly acquired and put together under independent, trustworthy auspices and on a sound basis. In this process the vital link is the individual lawyer who some morning found this questionnaire in his mail. With his cooperation we shall shortly be able to tell the story that so badly needs to be told.

In interpreting to the American people the function of the lawyer in modern society, figures about money are only a part of the whole picture; but they are an essential part, and they constitute an indispensable starting-point. There are no "strings" on our telling the full, true story when we get the facts, put them together, and draw the dependable inferences, including those as to income, from them all. This we shall do without restraint or coloration.

Data from the 1942 Inquiry as to Lawyers' Income

The 1942 inquiry by the Department as to economic conditions in the legal profession was conducted in the early summer of 1942. As in the past, the American Bar Association furnished

advice and cooperation. Questionnaires were mailed to a representative sample of 20,000 lawyers, who were asked to give information relating to gross and net income, costs, employment, pay rolls, and other items for the years 1936, 1937, 1939, and 1941.

The total number of employed lawyers and judges in the United States in 1940 was given by the 1940 Census of Population as 177,643. On the basis of data derived from the same source it was estimated that of this number, 128,093 were primarily engaged in independent practice, 20,247 were employed by these independent practitioners, and 29,303 (including, of course, all the judges), were employed by non-legal firms or government units. With the exception of the figure for independent practitioners, however, these data are inflated by the inclusion of law clerks who had not yet passed the Bar examination and who were not considered to be lawyers in the 1942 survey. This factor especially affected the figure for lawyers employed by

other lawyers.

The total gross income of the legal service profession in the United States reached an estimated \$927,000,000 in 1941, 6.4 per cent above 1940 and 9.6 per cent above 1931, the pre-1940 peak year. Total net income also reached a new high in 1941 at \$615,000,000.¹

Failure of incomes to regain their pre-depression level caused average net earnings of independent lawyers to drop, as early as 1940-41, from the first place among the three major independent professions to a position below physicians but still substantially above dentists.

The large increase in the number of lawyers from 1929 to 1941 prevented average earnings from pursuing a similar trend of increase. For independent practitioners the average gross and net income in 1941 were well below the 1929-31 levels, though above the intervening years. Estimates of the total and average gross and net income of independent practitioners from 1929 to 1941 are shown in the following table:

Year	Number in independent practice (thousands)	Total income (millions of dollars)		Average income (dollars)	
		Gross	Net	Gross	Net
1929.....	104	830	571	7,997	5,534
1930.....	108	819	557	7,594	5,194
1931.....	113	846	574	7,463	5,090
1932.....	114	717	470	6,297	4,156
1933.....	116	688	447	5,923	3,868
1934.....	116	740	488	6,362	4,218
1935.....	119	764	506	6,424	4,272
1936.....	120	790	525	6,581	4,394
1937.....	122	828	549	6,726	4,483
1938.....	124	809	531	6,470	4,273
1939.....	126	839	553	6,615	4,391
1940.....	128	871	575	6,747	4,485
1941.....	128	927	615	7,172	4,794

NOTE—The number in independent practice includes all lawyers deriving more than one-half of their total net income from independent practice. The total income figures include gross and net income from independent practice both for lawyers earning all their professional income from independent practice and for part-salaried lawyers. The average income series represent the average income of lawyers earning their entire professional income from independent practice.

For example, the Department reported in its monthly magazine *Survey of Current Business* that independent lawyers in 1941 had an average income of \$4794 from legal work. As shown in another article, physi-

cians averaged \$5047, dentists \$3782, veterinarians \$2657, and nurses \$1192.

1. Reliable data for 1942 are not available, but there are indications that 1942 incomes dropped substantially below the 1941 level.

A Free Judiciary:

American System Contrasted with Soviet

by **Alexander Wiley** • Chairman of U.S. Senate Committee on the Judiciary

■ The Wisconsin lawyer who is Chairman of the United States Senate Committee on the Judiciary took the annual dinner of the Bar Association of St. Louis on April 16 as the opportunity for a notable utterance in behalf of improved methods of judicial selection, in the States and in the nation, to the end that political considerations and party service shall be eliminated and judges chosen only for their qualifications of experience, temperament, independence, courage and freedom from philosophies which subvert certainty in the law and endanger the foundations of justice under law as administered in America. As to the federal judiciary, he hailed the services rendered by the American Bar Association and the State and local Bar Associations in obtaining information and judgment as to the qualifications of nominees and prospective nominees. For States which have the elective system for their judges, Senator Wiley endorsed the principles and objectives underlying the "Missouri Plan".

The distinguished Chairman of the Senate Committee, member of our Association since 1923, made it clear that he was not dealing merely with mechanics of judicial selection or the desirability of obtaining competent and efficient dispatch of the work of Courts. He was intent on emphasizing one of the deepest differentiations between the Soviet Union and the Communist-dominated satellites on one hand and the freedom-loving nations on the other—the existence of independent, law-governed, courageous Courts as essential to maintaining the God-given rights of men against lawless "goon squads" which are encouraged as agents of government ideology. In this era when the free nations of western Europe, the Americas, and Asia, need to define clearly and covenant mutually the tenets of freedom which are their common bond and which they are preparing to maintain and defend, for themselves and for each other, Senator Wiley's statement will be read with interest and approbation. When the free nations make and covenant their agreement for human rights and measures for the implementation of them, first place belongs to the maintenance of independent and courageous Courts. We regret space permits us to publish no more than the following condensation of a part of Senator Wiley's address in St. Louis.

■ The men who wrote our Constitution believed, as stated in the *Federalist* papers, that "independence of judges is equally requisite to guard the Constitution and the rights of individuals". They established the plan of selecting federal judges by Execu-

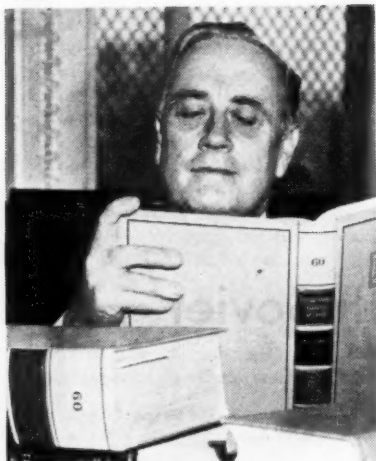
tive appointment with confirmation by the Senate and with life tenure and as a part of an independent branch of our Government. Ten of the original thirteen States followed this example of *life tenure*. In a few cases judges were chosen by the legis-

lature. In the quarter century following 1830, some fifteen States adopted the system of short terms for the judiciary filled by popular election. Every State admitted after 1846 followed that system. This was a product of the Jacksonian era, the wave of democratic fervor which swept the world, when lawyers became unpopular because they represented the creditor class and immigrants to our shores wanted statutes to supersede harsh rules of the common law. It is my understanding that today only three States, all of them among the original thirteen, retain life tenure; and only two of them have an appointive system in the stricter sense.

In our land, we settle private disputes and questions of public law in Courts presided over by judges who wield the judicial power of a sovereign people. With our complex social structure, the need for high judicial standards is greater than ever before. In the large cities of our land, political committees usually select the nominees for State judicial offices. Thirty-five States have elected their judges; some twelve States have had an appointive method more or less corresponding to the federal system.

Our Association's Judicial Selection Plan Offers to States the Avenue to Improvement

The American Bar Association began its studies as early as 1924. By 1937 the House of Delegates adopted and recommended a plan. Your plan,



ALEXANDER WILEY

known throughout the nation as the "Missouri Plan", follows this general pattern. Your Bar Association and the Bar Association of the State worked on this project for some four years; seven or eight years ago your State amended its Constitution to establish a system of judicial selection and tenure somewhat between elective and appointive methods.

You had as your objective the removal of judges from political "pot-boiler" patronage problems and pressure, and you made an attempt to avoid selection wholly through either popular ballot or executive appointment. You had more than a century of experience with judges selected by political election methods. Your system attempts to eliminate "blind voting" and hand-picked, boss-dominated, back-room nominees. I am told that your system has stabilized the quality of personnel at a higher and more uniform level of fitness and capacity for judicial work.

Plans similar to yours are under active consideration in a dozen or

more States at the present time.

In my own State of Wisconsin, just a few weeks ago, members of the Milwaukee Bar Association were being polled on a proposal that the Governor appoint all judges in the State from a list of candidates recommended by a nominating commission of lawyers and laymen, with all of the Governor's appointees subsequently seeking public approval of their records as judges in an election.

Integrity of Federal Judiciary Must Not Be Short-Circuited

The Constitution of the United States provides for the appointment of federal judges by the President "by and with the advice and consent of the Senate". For the most part, this has resulted in an able federal bench through the century-and-a-half of our national existence. Occasionally, when the plan has not been sufficiently insulated from the pressure of political forces, there have been short circuits in the integrity and independence of the federal judiciary. The last time I had occasion to make a survey, I found that since 1932, of 231 federal judges appointed, 214 were Democrats and seventeen were Republicans. It seems painfully apparent that political allegiance was the one factor which dominated appointments. That in itself may not be so important as long as all of the appointees measure up to sound judicial standards, and as long as they do not permit any political philosophy outside of the American concepts to dominate their judicial thinking.

Bar Consultation on Judicial Nominees a Desirable Aid

In the 80th Congress, we began the first testing of the plan whereby a

Committee on the Judiciary in the American Bar Association cooperates actively with the Attorney General, the Senate Judiciary Committee, and the State and local Bar Associations, in behalf of the selection of federal judges on the basis of their qualifications. I am happy to say that the first test was successful. It occurred with the nomination of a United States District Judge for the Southern District of New York. The weight of the organized Bar was put squarely behind the nominee of high qualifications in preference to a candidate with strong party organizational support. This was a contest between partisan selection and non-partisan selection for federal judicial office, and the qualified candidate was nominated and approved.

I have expressed two aims in connection with the work of the Senate Judiciary Committee as it relates to judicial appointments:

- (1) To seek a balance in the federal judiciary, and
- (2) To give full weight to the opinions of Bar groups in relation to integrity, legal qualifications and political philosophy.

I can see considerable merit in one of the proposals recently considered by the American Bar Association, suggesting that we establish by law a judicial yardstick of the qualifications for appointment to the federal bench, to the end that such appointees be citizens of the United States and lawyers who have been admitted to the practice for a definite period of time before appointments and that a reasonable proportion of the justices of the Supreme Court have a definite minimum of prior judicial experience in the Circuit Courts of

Concerning the Author: Alexander Wiley, member of our Association since 1923, has won high rank in the Senate of the United States since his election to it as a Republican in 1938, and is now the Chairman of the Committee on the Judiciary and member of the Committee on Foreign Relations. He was born in Chippewa Falls, Wisconsin, in 1888. Since attending the University of Michigan Law School and obtaining his law degree at the University of Wisconsin in 1907, he has practiced law in his native city and achieved State-wide reputation at the Bar. From 1909 to 1915 he was district attorney of

Chippewa County. In the Senate he has been a rugged debater on the floor and a diligent leader in committee work. His book, *Laughing With Congress*, reviewed by Walter P. Armstrong in 33 A.B.A.J. 1195, December, 1947, has won a national vogue. He has worked cooperatively with our Association's Committee on the Judiciary, has actively supported many Association measures, and has attended and addressed many Bar Association meetings, including that of our Association in Cleveland last September. As Chairman of the Committee on the Judiciary, he has given outstanding service.

Appeal, the federal District Courts, or the State Courts of last resort, and that all federal judges be prohibited from accepting assignments other than judicial assignments.¹

Executive Jobs for Judges an Undesirable Practice

The growing practice of putting "the finger" on judges to fill executive posts is a matter of serious concern. Justices of the Supreme Court have been stripped of the black robes of judicial office and have been used in this manner, Supreme Court Justices, federal Circuit Judges, District Judges, and Justices of the Court of Claims, have been called upon to perform executive and other non-judicial functions. Sometimes these assignments result in the permanent withdrawal of a judge from the nation's judiciary. Sometimes a judge is merely on "lend-lease" for temporary executive duty and then is returned to the bench. On still another occasion a judge leaves a judicial post to engage in executive activities and is subsequently appointed to another judgeship, often higher in rank than the one previously held.

Existing law does not provide adequate laws of conduct for all of the situations involved in this practice of shifting judges around like ribbon counter clerks in a department store. "The Judiciary", wrote Hamilton, "is in continual jeopardy of being overpowered, awed or influenced by its coordinate branches". It is reasonable to assume that it is difficult for a judge to maintain his integrity and independence if the practice becomes common of selecting judges for executive positions carrying exceptional privilege and prestige. The practice holds great danger to the independence of the judiciary.

The greatest single reason for maintaining an independent judiciary is that without it free people and free institutions cannot survive.

The Russian Judiciary and "Class Justice"

Let us consider the Soviet conception of the judiciary. In the last few days, I have had the opportunity of reviewing some of the notes which Dr.

Vladimir Gsovski has prepared for the use of the University of Michigan in connection with a forthcoming publication on the Soviet private law. The Soviet judiciary system was established with the advent of a new economic policy in 1922. The Peoples' Courts in Russia which had been designed to take the place of the revolutionary Courts were under constant reorganization. The Courts tried minor offenses, but the major part of criminal jurisdiction was absorbed by the so-called revolutionary tribunals and the Cheka. Both of these institutions proceeded without the guidance of any definite substantive law. Krylenko, the former Commissar for Justice, said that

The Cheka established a *de facto* method of deciding cases without judicial procedure . . . in a number of places the Cheka assumed not only the right of final decision but also the right of control over the Court. Its activities had the character of tremendously merciless repression and complete secrecy as to what occurred within its walls . . . final decisions of life and death, with no appeal from them . . . were passed . . . with no rules setting the jurisdiction or procedure.

In Russia the revolutionary tribunals have existed apart from the Peoples' Courts, and all of them had an indefinite jurisdiction over major crimes. Krylenko said:

In the jurisdiction of the (revolutionary) tribunals complete liberty of repression was advocated, while sentencing to death by shooting was a matter of everyday practice.

With the new economic policy of 1922, the Peoples' Courts and the revolutionary tribunals merged to a certain extent in a new judicial system, though the imposition of punishment in non-judicial procedures did not come to an end. The Cheka was abolished but its functions were assigned to a new political administration—the GPU, which later became the OGPU. The OGPU had unlimited power to put to death, though this was subsequently altered to some extent.

Impartiality and Independence of Judges Repudiated

By 1934, the OGPU was transformed

into a federal Peoples Commissariat for the Interior, which could sentence in a non-judicial procedure and could undertake its own investigations. It could arrest on any criminal charge. It could dispose of the case itself by imposing a sentence of confinement in a labor camp for five years, or it could transfer the case for trial to Court.

According to Gsovski's notes, the doctrine of impartiality and independence of the judge was repudiated by the Soviet jurists. A concept of "class justice" was set up in opposition to the traditional concept, though eventually the system made some recognition at least in theory of the impartiality of a judge. The Courts apparently are not above class interests and are by nature an organ of the Government power—"a weapon for the safeguarding of the interests of a given ruling class . . . a club is a primitive weapon, a rifle is a more efficient one, the most efficient is the Court . . . for us there is no difference between a Court of law and summary justice". Accordingly, the Soviet Court apparently is an organ of state administration and is presumably dedicated to carrying out a governmental policy with a judge who is a politician and a worker in the political field.

Low Level of Legal Training for Soviet Judges

On the basis of such information as is available, it appears that about 64 per cent of Soviet judges seem to lack any legal training whatsoever. The Judiciary Act of 1938 appears to express the new Soviet attitude toward law. The Soviet laws apparently have to be enforced unconditionally. Vyshinsky, who was Attorney General and a leading writer on questions pertaining to the Soviet judicial organization in 1941, said:

Neither Court nor criminal pro-

1. For such action as has been taken by the House of Delegates on the matters stated, see 34 A.B.A.J. 342-343; April, 1948. The Association approved the O'Hara bill (H. R. 129) which would prohibit federal judges from holding "any other office or employment" except when "specifically authorized by law". The House of Delegates favored amendment of the bill to prohibit also the holding of office under State and local governments.

cedure is or could be outside politics. This means that the contents and form of judicial activities cannot avoid being subordinated to political class aims and strivings.

Court decisions as judicial precedents are very dubious under Soviet law. Sometimes the Constitution and the statutory provisions as well as the discussions of Soviet jurists are difficult to reconcile with actual practice.

Independent Judiciary Against a Controlled Judiciary

Here then is the heart of our discus-

sion. We in this land are striving to maintain a strong, liberty-loving, *independent* judiciary—a judiciary which can serve as a bulwark in the preservation of the freedoms of our citizens, a judiciary which can serve to protect us from any unwarranted assumption of power by the legislative branch or a strong Executive, a judiciary which can maintain inviolate those rights and those privileges which are guaranteed to us under the Constitution.

In other lands these guarantees and these rights and these privileges

and these freedoms do not exist. They do not exist because there is no independent judiciary to maintain them. They do not exist because the judiciary in other lands have become slavishly subservient to the Executive branch of Government and because justice has been sandbagged into oblivion. The world struggle today is a struggle for survival—a struggle between philosophies, between ideas, between Government by law and government by men. Eternal vigilance for our Courts is the price of liberty.

3

Final Draft of Proposed Federal Condemnation Rule Expected June 1

■ Under a time schedule palpably unsuitable and inadequate if any expression of the views and specific suggestions of lawyers and judges generally were desired, the Supreme Court's Advisory Committee on Rules of Civil Procedure sent, soon after April 27, to a selected list of lawyers, judges, etc., a further intermediate revision of the proposed federal condemnation rule. By arrangement on April 23 between the Advisory Committee's Chairman, former Attorney General William D.

Mitchell, and the reporter for this rule, United States Circuit Judge Charles E. Clark, of Connecticut, comments and suggestions from those who received the draft were to be filed within ten days from April 24. It was stated that the Advisory Committee desires to submit to the Supreme Court by June 1 printed copies of its final revision of the proposed rule.

It will be recalled that sub-committee drafts of the proposed condemnation rule have been the subject of animated discussion in the profession from time to time since 1937 and particularly at meetings of our Association and other Bar Associations in 1946-47 and through referral by mail (see 32 A.B.A.J. 625 and 666, October, 1946; 33 A.B.A.J. 174, February, 1947; 33 A.B.A.J. 1020, October, 1947; and 33 A.B.A.J. 1109, November, 1947). The JOURNAL urged upon the Advisory Committee last year the advisability of according adequate time for comments on what was called the preliminary draft (see 33 A.B.A.J. 1020; October, 1947) and this was granted. On February 24 of this year the Advisory Committee met in Washington and considered the draft in the light of the many

suggestions which had consequently been received from the profession. A revised draft of March 3 was prepared by the reporter and given a limited distribution for further comment. The draft of April 24 resulted; this in turn has been supposedly the subject of further and final comment by the Committee and such others as received it. The final form for submission to the Supreme Court by June 1 was scheduled to be decided on by the Advisory Committee in Washington during the week of May 17-23.

The reason for acceleration has been indicated to be that unless the Advisory Committee's rule is submitted to and approved by the Supreme Court before its final adjournment for the summer recess, the rule cannot be filed at the opening of the first session of the 81st Congress next January, and could not take effect three months after the adjournment of that session in the absence of contrary action by the Congress. As the time has passed for comments and suggestions by the Bar as to the revision of April 24, it may be sufficient to say here that the characteristics of the preliminary draft appear to have

(Continued on page 528)



CHARLES E. CLARK
Reporter for Condemnation Rule

Rules for New Jersey Courts:

Bar and Public Assist Judicial Rule-Making

■ On and before May 15 the newly-constituted Supreme Court of New Jersey received from the Bar Associations, judges, law teachers, public officials, individual lawyers, and interested civic groups and citizens of the State their specific suggestions for the further improvement of the Tentative Draft of Rules Governing All of the Courts of New Jersey. This draft had in turn been hammered out in the same forum of professional and public opinion, with an extraordinary amount of work done in largely-attended sessions of the State and local Bar Associations. The bench, the Bar, and the public really "did a job" on the first Draft of the Rules, at the request of the Court and for assistance to it; and this process was repeated but intensified during the month (April 16 to May 15) allowed for specific criticisms of the Tentative Draft, of which 8500 copies, each containing 413 pages, were sent to all judges and lawyers, many public individuals, and many interested organizations and citizens.

It has all been a truly edifying exemplification of the democratic process for the assistance of the Supreme Court under the State Constitution of 1947, and the leadership of Chief Justice Vanderbilt has been manifest at all stages. Now the Court, itself in course of formation and organization under the new Constitution, has taken up the formidable task of analyzing and appraising all of the specific criticisms and suggestions, and then preparing the final versions of the rules for all of the Courts of the State. These will be promulgated in time to permit them to be read and understood by judges and lawyers by September 15, when the new rules will become effective. Judges and lawyers in other States may find much in the following account of the New Jersey experience that may be instructive and helpful to them in their own jurisdictions.

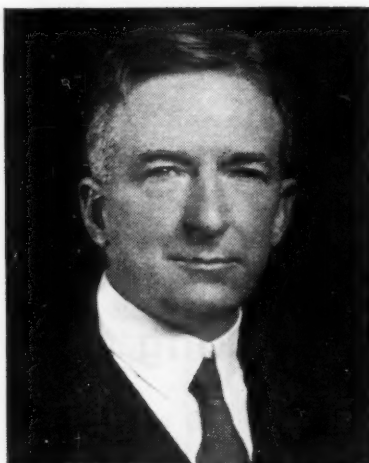
■ Although the new Constitution adopted by the people of New Jersey last November 4 provided the basic framework for a complete reorganization of the State's judicial system (see 34 A.B.A.J. 11; January, 1948), much remained to be done to complete the structure. The Constitution established the principal Courts of the State, but directed that the Supreme Court should make rules to govern the administration of all the Courts and, subject to law, the

practice and procedure in such Courts. Considering the volume of judicial business which the complex system of Courts in New Jersey handled each year under the old Constitution and the difficulties inherent in transferring causes, dockets, records, and personnel from the many old Courts to the fewer new ones, the magnitude of the problems of administration alone became evident. The rule-making task which confronted the new Supreme Court

was even greater because the new rules had to break new ground.

The Judicial Article will become effective September 15. Accordingly, the members of the reconstituted Supreme Court, made up of seven justices headed by Arthur T. Vanderbilt as Chief Justice, were confronted, from their appointment last December 15, with a very limited period of time in which to prepare for the inauguration of the new system. The Court determined nevertheless that it would not merely recast the existing rules of practice and procedure to make them more applicable to the new Courts, but would attempt a complete revision to incorporate enlightened and advanced procedures in operation in other jurisdictions. This decision in itself made the time schedule even more difficult, since it was apparent that the final draft of the rules would have to be promulgated in the early summer, in order to give the bench and Bar plenty of time to become familiar with the provisions before their effective date.

Such a task would have been all but impossible in the time allotted were it not for the availability of the Federal Rules of Civil and Criminal Procedure. The members of the Court agreed that these Rules—representing with their amendments nine years of work on the part of distinguished committees of jurists, practitioners, and law school profes-



International Press Service, Inc.
ARTHUR T. VANDERBILT
 Chief Justice, Supreme Court of New Jersey

sors aided by a host of cooperating Bar Associations and individual judges and lawyers—should form the basis for rules for trial Courts in New Jersey. The drastic effect of this decision on New Jersey practice is apparent as soon as it is realized that under the old Constitution New Jersey maintained virtually five separate systems of Courts which administered respectively civil law, criminal law, equity, probate, and divorce. Equally important was the decision to follow in general the cooperative methods of work by the profession and public which were employed in formulating the federal rules.

Obtaining Statistics of the Work-Loads of Existing Courts

Efforts were first made to collect statistics as to the work of the Courts under the old Constitution. This was essential in any effort to forecast the prospective work-loads of the new Courts and their several divisions. The task was undertaken of gathering a working library of authoritative materials on procedure and practice, judicial administration and reform, in this country and in England and Canada.

The Chief Justice of each of the State Courts, and the federal Senior Circuit Court Judges, were asked to furnish current copies of the rules governing their Courts and to comment in particular upon such rules as they had found most effective in

aiding the administration of judicial business. In studying these materials, the committee also had the benefit of a great mass of materials, as yet unpublished, surveying the status of the administration of justice in each of the States, which had been gathered together by our Association's Section of Judicial Administration in cooperation with the Junior Bar Conference, the National Conference of Judicial Councils, and the special Committee on Improving the Administration of Justice.

Help of the Bar Associations and of Individuals Enlisted

At the same time the New Jersey State Bar Association and each of the county Bar Associations were notified of the Court's program and need for assistance, and were asked to submit suggestions and recommendations for all of the new rules. Letters were sent to each of the judges, including not only the judges of Courts of record, but all of the Justices of the Peace, Recorders, Magistrates, and Police Court Judges, and to each County Prosecutor to get the benefit of the experience of everyone concerned with the judicial system. An invitation was extended, through the daily newspapers and the professional publications, to all the members of the Bar, to public officials, and to all interested citizens, to submit their suggestions and recommendations for the guidance of the Court in preparing a preliminary draft.

Special assignments of topics were made to numerous individual judges, lawyers, and committees, who were deemed especially qualified to handle such subjects by reason of their particular experience and background.

All recommendations had to be submitted on or before January 15. Detailed instructions were given as to the form in which proposals should be made; e.g., the submission should state first the specific language proposed for a rule, each recommendation to be in triplicate on a separate sheet or sheets of paper, with identification of the Court for which the rule was proposed, and

with the reasons for the proposal briefly stated.

Active Assistance of Laymen in the Rule-Making Is Secured

Recognizing the effective part of laymen in securing the constitutional reform of the judicial system, and being ever conscious of the importance of the intelligent and informed cooperation of the general public, efforts were concurrently made to acquaint the public with the problems confronting the Court and to enlist the cooperation of all interested citizens. Press conferences were held, and releases issued, which resulted in many helpful articles in the public newspapers throughout the State.

A little later the Court gave a dinner for the publishers and editors of all daily newspapers serving the State. Members of the Court explained the basic reforms they were seeking to effectuate in the rule-making program, as well as the formidable practical difficulties with which such sweeping rule-making was confronted. This convocation proved to be such a success that, at the suggestion of the editors, a further meeting was held the next week, to which all of the chief editorial writers and State House correspondents were brought in for a similar exposition.

Recommendations Are Analyzed and a Draft of Rules Made

By January 15 recommendations as to proposed rules literally filled four drawers of a steel filing cabinet. They presented a formidable task of organization and analysis, to insure that each proposal on each particular point would be grouped with all similar proposals for thorough study and review in time to be of help to the Court.

Individuals and groups were drafted to review and organize the proposals received as to each Court. The work was divided into the following principal groups: (1) Rules relating to the Supreme Court; (2) Rules governing criminal practice in the Superior Court and County Courts; (3) Rules governing civil practice

in the Superior Court; (4) Rules governing practice in the Appellate Division of the Superior Court; (5) Rules governing practice in the County Courts and the Surrogates' Courts; (6) Rules governing practice in the Juvenile and Domestic Relations Court; (7) Rules governing practice in the civil District Courts; and (8) Rules governing local Criminal Courts. Many of these groups were in turn subdivided into smaller divisions for intensive study.

During all of this time the Court itself held frequent conferences, not only to consider and determine the many problems of broad general policy which should be followed in the preparation of the rules, but also to review proposed drafts in detail. In numerous instances rules were drafted and redrafted many times before even tentative approval was given by the Court.

Submission of Drafts to Bench, Bar and Public Is Begun

By March 13 the Supreme Court had tentatively approved a draft of rules relating to the argument and deciding of appeals before it. A meeting sponsored by the New Jersey State Bar Association in cooperation with the Essex County Bar Association was held in Newark to present these formulations to the bench and Bar. More than 1200 judges and lawyers attended the meeting. It was an extraordinary, unprecedented session.

The purpose of the Court in presenting these rules first was stated by Chief Justice Vanderbilt in his address:

We have drafted the rules for our own Court first, solely to demonstrate to the bench and Bar of the State and to the public that in legislating for ourselves we are not adopting the easy way but what promises, in the light of experience elsewhere, to produce the most efficient results in the hearing and decision of appeals notwithstanding the additional labor which the new rules impose upon us in the performance of our task. It is only when we have so legislated for ourselves that we have the right to ask the trial judges, on whom the effective operation of the judicial system of the State so largely depends, to accept rules with similar consequences

in the spirit which must govern all of us if we are to meet the expectations of the people who drafted and ratified the new Constitution.

Summary of Principal Changes as to the Hearing of Appeals

After reviewing the five landmarks in the judicial history of New Jersey which culminated in the Judicial Article in the Constitution of 1947, Chief Justice Vanderbilt commented in considerable detail on the operation of the procedure and rules which the Court was planning to follow in hearing and deciding appeals. Among the most important changes in the procedure in the new Court of last resort were said to be that:

1. Oral argument will be required in all cases, thus discouraging frivolous appeals.
2. There will be one annual continuous term of Court, thus enabling the Court to hear a case as soon as it is prepared. (The present Court of Errors and Appeals has separate terms in February, May and October, sitting for about two weeks in each term.)
3. The Court will study the briefs and the record before a case is argued, thus increasing the utility and effectiveness of oral argument. (Under the present system briefs and records in thirty or forty cases are filed with the Court immediately before the opening of term, thus affording no time for the Court to review and study cases before argument.)
4. Assignments of error, grounds of appeal, writs of error, bills of exceptions, and specification of causes for reversal will be abolished, thereby eliminating time-consuming procedural matters which often create technical difficulties.
5. Each appeal will be heard upon a record consisting of the original papers below, and only such portions as the parties desire the Court to read need be printed as an appendix to the brief. (This is expected to produce substantial savings in printing expense.)
6. The time for appeals will be greatly reduced, thereby eliminating a cause of delay in obtaining a final determination of disputes.

The afternoon session on March 13 was devoted to a consideration of the use of pre-trial conferences, which will be introduced into the New Jersey Courts under the new rules. An instructive clinic was presided

over by Chief Justice Bolitha J. Laws, of the United States District Court for the District of Columbia, assisted by a distinguished group of Washington lawyers. With the aid of courtroom equipment furnished by the county and the services of a Court stenographer, the Chief Justice in his official robes presided at a series of pre-trial conferences which had every appearance of authenticity, inasmuch as they were based on actual cases which had been heard in Washington. Thus the New Jersey lawyers and judges were given a most informative exhibition of one of the new procedures to be introduced into their practice.

Tentative Draft of Rules for All Courts Issued April 16

The Supreme Court and the various advisory Committees continued their work, and on April 16 issued the Tentative Draft of Rules Governing All of the Courts of New Jersey. More than 8500 volumes of this draft, printed through the courtesy of the Soney and Sage Company, were mailed on that day to every judge and lawyer in New Jersey and to many public officials and interested citizens. In the foreword to this Tentative Draft, the Court earnestly solicited the suggestions of all with respect to both the substance and the wording. Detailed instructions were again given as to the form in which proposals should be submitted.

On April 16 also, individual letters were sent to the State Bar Association and to each of the county Bar Associations, asking them to study the draft and to submit criticisms and proposals as to its contents. In addition, specific parts were assigned to each Association for special and exhaustive review. Similar requests were sent at the same time to many individual judges, lawyers, and small groups, assigning special parts of the draft rules as to subjects in which the recipients are particularly expert. Again the time element was emphasized, and it was directed that all recommendations be submitted by May 15.

Final Stages of Revision and Promulgation Are Reached

The organized Bar has really "gone to town" on the drafts. The State Bar Association and the county Bar Associations, in addition to appointing active committees to prepare reports and suggestions and recommendations on the Tentative Draft, have also arranged for a series of meetings, to gain the benefits of discussions on some of the more difficult problems.

The organization of the proposals submitted up to May 15 is proving to be a task, although suggestions at the final stage are specific and well-considered, and each refers to a specific rule by number. The problems of analyzing the suggestions and of preparing revisions in the light of them will be more difficult because the excellence of the end-product of the work done as to the Tentative Draft and the decisions and formulations now made will have to be final and stand the tests of practical opera-

tion.

The Court plans to complete its review of all of the suggestions and to promulgate its final draft in June. Arrangements have again been made to secure rapid printing and distribution to the bench and Bar. The judges and lawyers will thus be enabled to make final study of the promulgated rules during the summer months and to prepare themselves fully for using the new rules on and after September 15 when they go into effect.

5

Report on Divorce Laws Acclaimed at National Conference on Family Life

■ Not in many years has a study and report made under the auspices of our Association received as extensive publication in newspapers throughout the United States, or as much approval and commendation, as was accorded to the report prepared for the National (White House) Conference of Family Life and its Legal Section on May 6-7, by our Association's Committee which organized and conducted the Section and submitted the report on the legal aspects of the matters before the Conference, particularly as to abuses in divorce laws and practice and the need for "family courts" (33 A.B.A.J. 1207, December 1947, 34 A.B.A.J. 43, January 1948; and 34 A.B.A.J. 195, March 1948). The remedial proposals of the report were featured as front-page news in the afternoon papers throughout the country on the day the Conference released the report, and a notable volume of special articles and editorial comment has continued to discuss and commend the formulation which will probably be a mile-stone in the history of divorce laws and of our profession. The document did not reflect action by the House of Delegates or the Board of Governors of our Association, but stands as the considered judgment of the authorized Committee, who obtained the opinions and judgment of many judges, lawyers, social workers, church authorities, and the like, before drafting the recommendations. The report is likely to be presented to the House of Delegates at its meeting in Seattle September 6-9.

■ The discussion in the report and its remedial recommendations were to the effect set forth in our March issue ("Divorce Laws: Remedies for Abuses and Scandals are Sought", 34 A.B.A.J. 195), and was submitted for the consideration of the Conference, the profession and the public, in fulfillment of our Association's duty to advise as to conditions and remedies in this field of law. Its language was plain and outspoken; its proposals were specific. Presented

to the Conference by Judge Paul W. Alexander, of Toledo, Ohio, Vice-Chairman of our Association's Committee, a jurist experienced in the practical day-by-day problems, the report made a deep impression and figured largely in the subsequent discussions.

"Our divorce laws are thoroughly bad," the report declared. "They are universally condemned. They have failed of their objective. They constitute a threat to the stability

of the home. They are based on a false premise . . . Divorce proceedings today are a farce. The truth is not in them. Hypocrisy is the order of the day. Nine divorces out of ten are secured by agreement of the parties. Everybody must pretend that it is not so, but it is so." The divorce trial, in 90 per cent of the cases, becomes in reality "a sham battle against the little man who isn't there". The practice of "collusion" and the doctrine of "recrimination" were unsparingly condemned.

The report recommended that the whole philosophy of divorce laws and divorce Courts be changed from one based, as at present, on guilt and punishment, to the ideal of diagnosis and treatment such as has been accepted, *in theory at least*, as the basis of Juvenile Court procedure. Wherever possible, prevention of divorce through reconciliation would be sought by the new-type Family Court that would handle divorce cases instead of the present-day divorce mills. Most divorce hearings today are, in effect, quasi-criminal trials. The main issue is: Is the defendant guilty as charged?

The Committee which acted for our Association in organizing the Legal Section of the Conference and prepared the report consisted of

Reginald Heber Smith, Chairman; Judge Alexander, Vice-Chairman; Miss Charlotte E. Gauer, of Chicago; Clarence Kolwcyk, of Chattanooga, Tennessee; William P. MacCracken Jr.; and William L. Ransom.

The success of the Conference exceeded anticipations. The 125 selected sponsoring organizations in diverse fields were ably represented. Approximately 1000 delegates attended; every State in the Union, with Hawaii and Alaska, was represented, with registered visitors from thirty-three foreign countries.

Future Action as to the Remedies Proposed

The Conference had decided, and had announced in advance, that it would take no vote on any report. Despite considerable opinion among the delegates to the contrary, the board of trustees declined to make an exception as to the legal report. The Conference and its Section of Legal Action Areas will send the report to the 125 sponsoring organizations, including our Association, with a statement that the Conference received the report with great enthusiasm and recommends it for study and action. It will probably be sent also to State Bar Associations with a like statement.

If President Truman decides to appoint the recommended commission for further study as to divorce

laws, an effort may be made to get the necessary funds from foundations, as divorce laws have not been made a federal matter.

Newspapers Commend Our Association and the Report

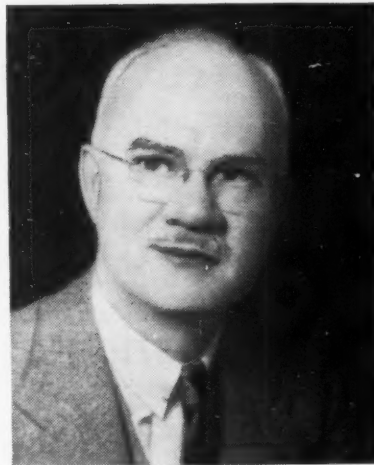
From the many commendations of the report in editorials and by special writers we quote two. Albert Deutsch in *PM* said:

The report is the first official statement on the problem by the American Bar Association, and its phrasing is extremely strong and forthright for this conservative body, which has 42,000 lawyers as members. (The "divorce case specialists" may not like the report. According to Judge Alexander, they comprise from two to five per cent of the legal profession) . . .

The ABA merits commendation for coming through with such forthright criticisms of our scandalous divorce Court system and recommending such a far-visioned change in the entire philosophy of divorce. Its suggestions are certainly no cure-all for modern family problems, but they would plug up one of the worst loopholes in our legal system for the regulation of family life.

The *New York Daily News* said editorially:

The conference was regaled with at least one document which we thought had plenty of red meat in it. This paper was a 34-page report from the American Bar Association on the whys and wherefores of the soaring divorce rates in the United States. The ABA gave as its considered opinion that most of our present divorce laws, in



Shelburne Studios

PAUL W. ALEXANDER

Presents Report to the National Conference on Family Life

virtually any State you can name are "rotten". One of the most astonishing features of this report submitted by lawyers, was that if its recommendations were to be adopted a lot of lawyers would be cut out of considerable practice. Better mark that up to the credit of the legal profession. We don't look for any early attacks on the divorce problem along these radical lines. But such attacks can't start too soon to suit us—and, we think, millions of other Americans.

It is expected that the National Conference on Family Life will be continued for the completion and circulation of its notable factual studies. A biennial session may be projected.

A Royal Governor's Description of New York Bar in 1700

■ In a letter to the Council of Trade and Plantations from the Earl of Bellomont, written from Boston on July 15, 1700, the then Royal Governor of New York described the local Bar, when he wrote with reference to the appointment of a Judge and Attorney General for New York and advocated that they be paid adequate salaries:

A good and upright administration of justice in New York and New Hampshire would do a wonderful service to the Crown by the influence it would have on the people there and in the neighbouring Plantations, who seem to be out of conceit with the laws and government of England, because they know not the blessings of either, and because those pettifoggers who practice the law among 'em

are rooks and pickpockets, having no skill in the law, but put people upon litigation and then take fees from both sides, so that right or wrong, the issue goes for him that has the better purse.

—From the *Callendar of State Papers, Colonial Series, America and West Indies, 1700*. Page 417. (Record Office, London, 1910).

Robert G. Simmons:

Chief Justice of Nebraska Supreme Court

■ The judicial system of Nebraska has been kept simple, flexible, and efficient. The State Constitution provides:

The judicial power of the State shall be vested in a Supreme Court, District Courts, County Courts, Justices of the Peace, and such other Courts inferior to the Supreme Court as may be created by law; but other Courts may be substituted by law for Justices of the Peace within such districts, and with such additional civil and criminal jurisdiction, as may be provided by law.

The Supreme Court is thus the keystone of the judicial arch of the State. It is the appellate Court, and consists of a Chief Justice and six Associate Justices. The Chief Justice is elected by the State at large. The State is divided into six Supreme Court judicial districts; one Associate Justice is elected from each district. The term of office is six years.

To facilitate the transaction of business, the Supreme Court is authorized to sit in two divisions. When so sitting, it may call in District Judges to act as Supreme Court judges, sufficient in number with the Justices of the Supreme Court to constitute two divisions of five judges each. The District Court is the Court of general jurisdiction in civil and criminal cases. There are eighteen District Courts in the State, served by thirty-five District Judges elected in their respective districts for terms of four years each. The Constitution gives the District Judges the right to hold Court for each other and requires them to do so when ordered by the Supreme Court. County Courts are established for each county, and are given jurisdiction over probate matters and a limited jurisdiction in civil cases. Under another constitutional provision, the Supreme Court is given power to promulgate rules of practice and procedure for all Courts, uniform as to each class of Courts, and not in conflict

with laws governing such matters. By its power to call in District Judges to act as Supreme Court Justices, its power to require District Judges to hold Court for each other, and its power to promulgate rules of practice and procedure, the Supreme Court has considerable supervisory control in expediting the administration of justice. The Chief Justice of the Supreme Court is the head of the judicial system and holds the highest place in the legal profession in Nebraska.

All judges in Nebraska are nominated and elected on what is called a non-political ballot. No designation of the party affiliation of the candidates is permitted. To gain sufficient popular support to be nominated and elected to the bench, a candidate has to have the confidence and commendation of the members of the Bar. Wide acquaintance among lawyers and people, confidence and approval gained among the electorate through political and civic activity as well as at the Bar, public approbation of a lawyer's known philosophy of law and government and his adherence to the fundamentals of our American system, are factors which inevitably and soundly enter into successful candidacy for judicial office under an elective system, in Nebraska as elsewhere.

The present members of the Supreme Court of Nebraska are:

Robert G. Simmons	Chief Justice
Byard F. Paine	
Edward F. Carter	
Fred W. Messmore	
John W. Yeager	
Ellwood B. Chappell	
Adolph E. Wenke	Associate Justices

Sketch of Chief Justice Simmons' Career

■ The pioneer spirit of Nebraska and its development as a State are typified in the life of its present Chief Justice. The simplicity and strength of its judicial system find a counterpart in the rugged jurist who heads it.

Nebraska was established as a Territory in 1854. Its eastern boundary was and is the Missouri River. In a message to the territorial Legislature in 1857, its then Governor said:

It is I believe universally conceded

by all who are familiar with the geography of the Territory that our principal settlements for many years to come will be confined to a tract of country not extending more than thirty miles from the Missouri River. In spite of this timid prediction, Nebraska was settled and developed

within the period prescribed in the rule against perpetuities. The oxcart, the covered wagon, the pony express, and the paddle-wheel steamboat, have been replaced by the automobile, the aeroplane, the radio, and the diesel locomotive. The State has witnessed in succession the emigrant, the cattleman, the homesteader, the granger, the rancher, the farmer, and the industrialist. It has seen the veterans of the War Between the States, the Spanish-American War, World War I, and World War II, return after service to their country and take their part in the affairs of State and national government. Today there is no longer any public land for entry in any part of the State's area of more than 75,000 square miles.

The Son of Pioneering Parents in Western Nebraska

Less than fifty years after the 1857 prediction of the territorial Governor and more than 400 miles west of the Missouri River, a settlement was established that is now one of the principal cities of the State—Scottsbluff. The first postmaster of this new settlement was a typical pioneer. He and his wife had emigrated from New York to Nebraska in 1883. In New York, he had been an apprentice to an apothecary. In Nebraska, he first engaged in selling farm machinery in the eastern part of the State. This business failed, as a result of selling machinery on credit. In 1886, he moved to the extreme western part of the State and made a homestead entry under the Act of Congress of 1862—a transaction which has been aptly described as a wager by the government of a quarter section of land that the homesteader could not live on the land five years without starving to death. His first dwelling place was a dugout in the side of a hill. A few years later he entered a tree claim on land along the North Platte River. A sod house was constructed as the family dwelling.

In this sod house, on December 25, 1891, Robert G. Simmons was born. His father had to drive a distance of eleven miles in a lumber



ROBERT G. SIMMONS

wagon to bring the doctor who attended at his birth. It was raining. The rain seeped through the earthen roof to such an extent that the father had to hold an umbrella over the mother while the physician brought the future Chief Justice of Nebraska into the world.

Rugged Conditions of Life on Homestead Lands

How a rugged pioneer family would usually win the onerous wager with the government is illustrated by the Simmons family. The secret was work by all. The father eked out a bare living from the soil. The mother, when young Robert was two years old, taught a district school more than thirteen miles away from the home. While she was teaching school, the father and the older children tended the younger ones. On Saturdays and Sundays, the school not be-

ing in session, the mother would come home and do baking, washing, ironing, and mending for the family. Her pay was \$30 a month, and the warrants she received in payment had to be discounted ten per cent for cash. This money provided the margin that enabled the Simmons family to pull through. But even more important was the lasting standard set by his mother at this time and in her words: "We must keep on keeping on".

The first school that Robert attended was typical of the time and locality. The structure had one room and was built of prairie sod. The earth was the floor. The pupils sat on board benches. One teacher taught all of the grades. Of necessity the instruction covered only the essentials, but was thoroughly given and constituted a solid foundation for the pupil's future education.

The Simmons Family Moves into a Small Village

In 1898, the family left the farm and moved to the town of Gering, a community of about 300 people, situated on the south side of the North Platte River. This move was made in order to obtain better educational advantages for the children. The superior school advantages consisted of a two-room frame schoolhouse with two teachers. The father bought and operated a small grocery and meat market. The home consisted of an old hewn-log house, to which was added a frame room about sixteen feet square that became the kitchen and dining room.

In 1900, the Chicago, Burlington and Quincy Railroad Company built a line up the north side of the North Platte River and located the town of Scottsbluff. One day the father took his nine-year-old son Robert across the river, and the boy watched with wide eyes the laying of rails and saw his first steam engine. Later, the father received appointment as postmaster for the new town. Since his father was postmaster and the position was then dependent on political standing, young Simmons early came into contact with politics and developed an interest in political affairs.

Young Simmons Works While He Studies in Scottsbluff

The new town grew rapidly. The Reclamation Act was passed by Congress in 1902. Scottsbluff became a center of irrigation development that resulted in not only a rapid gain in population but also a marked increase in land values. New settlers poured into the town. With the influx in population and rise in property values, the economic status of the community in general and the Simmons family in particular improved. But it did not dispense with the need for hard work nor dampen the inclination of young Bob Simmons to do his part in it. In his senior year in high school he did the janitor work for the three buildings that housed the entire school system and received as his pay the sum of \$50 a month. To be janitor required

him to get up at five on school mornings to build fires and dust desks; after school he had to put in hours of work in sweeping floors, carrying out ashes, and carrying in coal. For some time he was janitor also for the law office of the firm of Wright & Wright, where he occasionally opened a book and "read law". His son is now associated with the successors to that firm.

Notwithstanding his janitorial duties, he was a member of the debating team, participated in oratorical contests, and had the highest average in his high school class upon being graduated in 1909. His future course was charted when, in writing up the graduating class, the editor of the local paper predicted that young Simmons would practice law, "for life or during good behavior".

Struggle for a College Education and a Law Degree

The task of obtaining a college education and a degree in law was worked out by Bob Simmons in his own way. In religion, his parents were Presbyterian. The schools of higher education in Nebraska were largely denominational institutions. So he selected Hastings College, operated under the auspices of the Presbyterian Church, for the collegiate work required for admission to the Law College of the University of Nebraska. He spent two years at Hastings College, which, years later, conferred on him in 1942 the honorary degree of Doctor of Laws.

During his two years in academic studies, he earned his board and room by tending furnaces, waiting on tables, and other jobs. He then stayed out of school a year, and went to work first for a telephone company and then for the Burlington Railroad; in this employment he saved enough money to finish his education. In the fall of 1912, he entered the Law College at the State University, and was graduated in 1915. He was awarded the Order of the Coif.

Beginnings of Law Practice Interrupted by Service in Army

Contrary to what is often the accepted advice in such situations, he

returned to his home community to practice. A year later, in 1916, he was elected county attorney of Scotts Bluff County. He was getting his practice well under way when his country entered World War I in April of 1917. He resigned his office as county attorney and enlisted in the Air Service of the United States Army. Before that he was married on June 23, 1917, to Miss Gladys Weil.

Even in the Army his career gravitated toward law. Although he entered as an enlisted man, qualified as a balloon pilot and as an observer, and became a Second Lieutenant in the Air Corps, he became in the summer of 1918 a Judge Advocate of general courts martial and taught the law of courts martial in the officers' training school. How he came to do this would be a long story—suffice it to say that his courage in insisting on the rights of a fellow soldier, and his thorough investigation of and skill in preserving those rights, won him the disapproval, then the admiration and respect, of his commanding officer. He received his honorable discharge from the Army in January of 1919.

Returning immediately to his home community and resuming the practice of law, he was elected in 1920 the Department Commander of the American Legion for the State of Nebraska. In 1921, he became the President of the University of Nebraska Alumni Association. These excursions into extra-curricular activity proved to be preliminary to active entry into the political arena along with his law practice.

The Young Lawyer Is Elected to Congress

In 1922, he filed for candidacy on the Republican ticket for nomination and election as Member of Congress from the Sixth Congressional District of Nebraska. The "Big Sixth", as it then was known, embraced a territory of more than 40,000 square miles. It included thirty-six of the ninety-three counties in the State. One of the counties was more than ninety miles long and fifty miles wide. He and his wife actively cam-

paigned this far-flung district. He was then a little more than thirty years old. He was elected.

The scene for the next ten years transferred to Washington. For five consecutive terms, Robert G. Simmons represented his State in Congress. The young Congressman made his presence felt by his hard work and manifest intellectual ability. For eight years he was a member of the powerful Appropriations Committee. Among his colleagues was Fred M. Vinson, now Chief Justice of the Supreme Court of the United States. Representative Simmons was one of the influential members on the Republican side who sustained defeat in the Democratic landslide of 1932.

Retirement from Congress Followed by Success at the Bar and Election as Chief Justice

When he was thus retired from Congress in 1933, he was forty-two years old. He had a wife and three children to support. He began again the building of a law practice, this time at Lincoln, the capital city of his State. In five years he re-created a successful practice and came to be recognized as one of the leading trial lawyers in the State. In Nebraska, the ambition of most lawyers is to achieve such distinction in his profession as to be considered suitable timber for the bench. For most lawyers, this takes decades at the Bar and on the hustings. For Bob Simmons, it took half a decade, after he left the halls of Congress.

In 1938, the active practitioner and former Congressman filed as a candidate for Chief Justice of the Supreme Court. Numerous other lawyers filed. When the voters had expressed their will, the Lincoln lawyer, who had come from the "sod house country" of the Western plain, had been elected. In 1944, he was re-elected for a second term.

Improvement in Handling the Business of the Court

On taking office in 1939, the new Chief Justice first observed quietly for a year or so the functioning of the Court over which he presided. Then he started some improvements. Traditionally the Court held sittings

twice each month at which oral arguments were presented. During those two weeks the judges were unable to do much work on their opinions. Usually four cases were heard each day, Monday through Thursday. In 1942, Chief Justice Simmons broached the idea of having but one sitting of the Court for oral arguments each month. To compensate for the omitted session, he suggested that cases be heard on Fridays and one or two additional cases be heard each day. This enabled each judge to have three weeks clear, instead of two, for study of cases and the writing of opinions.

Another improvement inaugurated under the regime of Chief Justice Simmons has been with reference to rehearings. Oral argument on motions for rehearing had been granted only in exceptional instances. A chief complaint of lawyers with respect to the State Supreme Court was then what they felt to be a lack of due consideration of motions for rehearing, seriously made and believed to be well-founded. They urged that a Court should want to know if it had erred. So a rule of the Court was promulgated whereby oral argument was allowed as a matter of right on any motion for rehearing upon request by either side. The Saturday during the week of sittings to hear oral arguments on cases was set aside exclusively for hearing motions for rehearing. All procedural improvements were made with the full concurrence of the Court.

Chief Justice Simmons has been active also in advocating a simplification and "streamlining" of the State's rules of practice and procedure. Where not limited by statute, the Supreme Court has promulgated a number of changes, such as the adoption of a pre-trial procedure, under its rule-making powers. Where statutes stand in the way, the Court has caused recommendations to be made to the Legislature for changes, such as reducing the time for taking an appeal to the Supreme Court from three months to one month after the rendering of judgment in the District Court.

Characteristics of Judge Simmons' Opinions in the Court

In the preparation of his opinions, Judge Simmons has developed a style that is regarded as all his own. It was not the result of chance. Shortly after he took office, he wrote to the presiding judge of all the appellate Courts in the United States, asking for suggestions for improving the form and substance of opinions. On the replies received, and his own experience, Judge Simmons wrote an article, "Better Opinions—How?", in 27 A.B.A.J. 109; February, 1941. His conclusions as to what an opinion should contain were summarized:

What must be the content of an opinion? It must state: First, the facts either of pleading or evidence, or both; second, the issues presented for decision, and, in some but not all cases, how those issues arise; third, the applicable law, and where not already definitively declared, the statement of sound fundamental principles and the necessary reasoning leading from those principles to the conclusion embodied in the judgment of the Court; and fourth, the decision reached. The opinion should contain facts, issues, law, reasons, and decision with sufficient detail, exactness, and clarity to enable the profession to determine, *from the opinion*, without too much effort, just what has been decided and why.

To carry out this concept his opinions follow a definite pattern. The nature of the case and the ultimate result arrived at by the Court are stated in the opening paragraph. Then in orderly sequence the four parts of the opinion referred to in his article are developed. As a whole, his opinions are short, clear and readable. No elaborate footnoting is used. Lengthy quotations are avoided. The end sought to be attained is simplicity and ease of understanding rather than ostentatious display of legal knowledge.

The influence of his pioneer environment is shown in his opinions. They stick to fundamentals. Civil and criminal cases receive equally careful consideration. Property rights are viewed as important as personal rights. Under the due process clause, neither life, liberty nor property are

(Continued on page 528)

Venue of Actions:

Substitute for Jennings Bill [H. R. 1639] Is Urged

by Edward J. Devitt • Member of Congress and the Minnesota Bar (St. Paul)

■ In the JOURNAL last July (33 A.B.A.J. 659; July, 1947), Thomas B. Gay, of Virginia, presented an interesting and sincere defense of H.R. 1639 (80th Cong., 1st Sess.) to restrict the venue of actions under the Federal Employers' Liability Act. When Mr. Gay wrote, the bill was pending before the House of Representatives. It has since passed the House in an amended form and has been referred to the Senate Committee on the Judiciary, which has held hearings thereon and considered further amendments. The bill undoubtedly will receive further consideration during the present second session of Congress. The purpose of this ar-

ticle is to demonstrate that, notwithstanding Mr. Gay's reasoned arguments, which represented a fair consensus of the views of those supporting the measure, it contains many objectionable features and unjustly discriminates against large numbers of people.¹ I shall propose what I believe to be a more satisfactory alternative to H.R. 1639.

The second Employers' Liability Act, as originally enacted in 1908, left the venue of suits under it in federal Courts to be determined by the general venue statute, which fixed the venue in districts of which the defendant was an inhabitant. Since defendant railroads were considered

to be "inhabitants" only of the State of their incorporation, this restriction proved extremely burdensome upon railroad employees. Accordingly, in 1910 Congress amended the Act to insert the venue provisions which now are in effect and which have remained substantially unchanged for a period of thirty-seven years. Under this provision (Section 6 of the Act as amended; 45 USC § 56), the claimant has the choice of suing in the District Courts of the United States, either in the district of the residence of the defendant, or in the district where the cause of action arose or in which the defendant is doing business at the time of the

■ At a hearing before Sub-Committee No. 4 of the House of Representatives on the Judiciary on April 18, 1947, Thomas B. Gay, then President of the Virginia Bar Association and Chairman of our Association's Committee on Jurisprudence and Law Reform, appeared and made a trenchant statement of the reasons why the Jennings bill (H.R. 1639), which had then been endorsed in principle by the House of Delegates (32 A.B.A.J. 493; August, 1946) was strongly and generally supported by the organized Bar. Mr. Gay's argument was published in the JOURNAL ("Venue of Actions: Bill To End Shopping for Forums Is Urged", 33 A.B.A.J. 659; July, 1947).

After the hearing, H.R. 1639 was amended in one respect by the Committee, reported favorably to the House, passed by the House and sent to the Senate in that form, and referred to the Senate Committee on the Judiciary. Hearings have been held by that Committee also, at which our Association was represented by Frederick W. Brune, of Maryland, now Chairman of its Committee on Jurisprudence and Law Reform. Further

amendment of the bill has been considered by the Senate Committee.

Meanwhile, at the Annual Meeting of our Association in Cleveland last September, Mr. Gay, as Chairman of the Association's Committee, reported to the House of Delegates (34 A.B.A.J. 76; January, 1948) the action of the House of Representatives as to H.R. 1639 and the amendment of it, and raised the question as to whether the House of Delegates wished to give the Committee any different direction from that which the House had given the Committee for support of the bill. No different instructions were given, although at least one member favored going back to the original bill. At the midwinter meeting on February 23-24, Mr. Brune, as Chairman of the Committee, reported concerning the bill (34 A.B.A.J. 341; April, 1948); and the House adopted resolutions which reaffirmed in principle "its approval of the Jennings bill (H.R. 1639)" but endorsed stated amendments of the bill as "consonant with that approval" (for full text see 34 A.B.A.J.

commencement of the action. It is also provided that the jurisdiction of the federal Courts shall be concurrent with that of the State and that an action brought in a State Court cannot be removed to any Court of the United States. It thus will be noted that the whole question of venue as related to State tribunals is left to be determined by State law.

No particular difficulty arose under this provision until the decisions of the Supreme Court in *Baltimore & Ohio R. Co. v. Kepner*, 314 U. S. 44 (1941) and *Miles v. Illinois Central R. Co.*, 315 U. S. 698 (1942). In the *Kepner* case, the Court held that the federal statute gives an injured employee the privilege of bringing his action in any district in which the railroad is doing business, although the district chosen be far from the district in which the employee resides or in which the cause of action arose, and that the exercise of this privilege to sue in a federal Court cannot be enjoined by a Court of the State where the employee resides on any ground that the suit is inequitable, vexatious and harassing to the railroad. In the *Miles* case, it was held further that the venue provision of the Employers' Liability Act prevented a State Court from enjoining, on the ground of inconvenience or expense to the railroad, a resident citizen of the State from prosecuting his action in a Court of another State

having jurisdiction under the Act. Neither decision expressly ruled whether the forum where the suit was instituted could properly apply the doctrine of *forum non conveniens* ("the Court is not convenient") and refuse to exercise its jurisdiction of such a suit. But in the *Miles* case there was a *dictum* that the forum State "here involved must permit this litigation". And in *Leet v. Union Pacific R. Co.*, 155 P. (2d) 42, (Calif. Sup. Ct., 1944), it was expressly held that a State Court could not apply the rule of *forum non conveniens*.²

Reprehensible and Unethical Practices Now Existing

It must be conceded that, following the Supreme Court decisions referred to, there grew rapidly and now exists a reprehensible and unwholesome practice by which certain unethical attorneys solicit cases under

the Act and transport them to far-distant places for trial (in many cases where the railroad involved does not even operate trains), and that these attorneys employ "touts" and runners for such solicitation, all to the detriment of the legal profession, the railroad employees and the general public. The evidence presented at the hearings on H.R. 1639 was clear that the legal business under the Act is concentrated in the hands of a relatively small number of practicing attorneys and that such actions are customarily brought in a restricted number of communities in the country. The evidence was also overwhelming that some of this practice was conducted in an unethical and undesirable manner.

It is admitted that some action must be taken to correct the situation and it is not the purpose of this article to defend such practice. The issue is the choice of method.

1. In this connection, it should be noted that on February 23, 1948 the House of Delegates of the American Bar Association adopted a resolution in part as follows:

"I. RESOLVED: That the House of Delegates of the American Bar Association reaffirms its approval in principle of the so-called Jennings bill (H.R. 1639, in the 80th Congress), and endorses, as consonant with that approval, amendments (1) broadening the basis of venue authorized in any case from the county to the State in which the injured person resided or in which the injury occurred, and (2) permitting the application of the doctrine of *forum non conveniens* to actions for personal injury or wrongful death; and that the President of the United States, and the Committees on the Judiciary of the Senate and of the House of Representatives be advised of this resolution; and that the Committee on Jurisprudence and Law Reform, or representatives

designated by that Committee, be authorized to appear in support of this legislation."

This seems to me to represent a substantial modification of the Association's previously expressed views.

2. See note in 58 Harv. L. Rev. 877 (1945). Although *Douglas v. New York, New Haven and Hartford R. Co.*, 279 U. S. 377 (1929), has sometimes been referred to as permitting a State Court to decline jurisdiction on the basis of *forum non conveniens*, the Court only held that a statute of New York, which gave discretionary jurisdiction to suits by non-residents but compulsory jurisdiction to suits by residents, was valid since it treated citizens and non-citizens alike and tested their right to maintain an action by their residence or non-residence. See *Miles v. Illinois Central R. Co.*, 315 U. S. 698 (1942), footnote 6 of the opinion.

341; April, 1948). Excerpts from the resolutions adopted by the House of Delegates last February, after the amendment and passage of the Jennings bill, are quoted in the first footnote of this article.

There has been correspondence between the Editor-in-Chief of the *Journal* and Congressman Devitt, of the Minnesota Bar (Ramsey County), who has strongly opposed H.R. 1639 while conceding the existence of evils and abuses against which remedial legislation should be directed. It seemed that the broadening areas of agreement might be developed and explored. Mr. Devitt submitted for publication an article which states his objections to H.R. 1639 and outlines his suggested substitute. In so doing he wrote to the *Journal*:

The testimony at the hearings convinced me that the provisions of the Jennings bill are altogether too harsh and unworkable. The present attitude of the American Bar Association as reflected in its February 24 resolution now corresponds more closely with my own views on the matter.

Despite shortness of time for so doing, Chairman Brune has prepared for the *Journal* a brief comment on Mr. Devitt's article. Mr. Brune's statement is at the end of Mr. Devitt's contribution. Both are in excellent spirit, and seem to us to advance the subject substantially. Although privileged to present "both sides" of the issues as to the bill, the *Journal* continues its support of the action voted by the House of Delegates in February. We cannot agree with Mr. Devitt that the amendment of the bill before its passage by the House of Representatives vitiates necessarily all State and local Bar Association support of the bill in principle where such action was voted before the amendment. In some instances such Associations have reconsidered the matter and reaffirmed their support, as did the American Bar Association. The importance of the legislation manifestly warrants a re-examination of the subject, in the light of Mr. Devitt's argument and substitute proposal, as well as Mr. Gay's argument and Mr. Brune's statement.



EDWARD J. DEVITT

Provisions of H.R. 1639 as It Passed the House

First, let us look at the exact terms of H.R. 1639 as it passed the House. The bill provides that the second paragraph of Section 6 of the Employers' Liability Act shall be amended to read: "No case arising under this Act and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States". The bill thus eliminates the present venue provisions of the Employers' Liability Act. The bill then further provides:

Sec. 2, Section 51 of the Judicial Code, as amended (title 28, U.S.C., sec. 112), is amended by adding at the end thereof a new paragraph as follows:

"A civil suit for damages for wrongful death or personal injuries against any interstate common carrier by railroad may be brought only in a District Court of the United States or in a State Court of competent jurisdiction, in the district or county (parish), respectively, in which the cause of action arose, or where the person suffering death or injury resided at the time it arose:

"Provided, That if the defendant cannot be served with process issuing out of any of the Courts aforementioned, then and only then, the

action may be brought in a District Court of the United States, or in a State court of competent jurisdiction, at any place where the defendant shall be doing business at the time of the institution of said action".

The above-quoted section of the bill (1) amends the general venue statute for United States Courts; (2) includes not only suits by injured employees of railroads but also all civil suits against interstate railroads for damages for *wrongful death or personal injuries*; and (3) determines the venue of *State actions*. The original version of H.R. 1639, as well as its predecessors (H.R. 242 and H.R. 6345; 79th Congress), purported to amend only the Employers' Liability Act and did not attempt to deal with actions other than those by railroad employees.

Discussion of Reasons Given for Support of the Bill

What are the reasons given by Mr. Gay in support of this measure? Immediately, we are met by the fact that he does not discuss H.R. 1639 insofar as it deals with civil suits other than those by railroad employees. His remarks are directed only towards the reasons supporting a limitation of venue with respect to suits by injured railroaders. This is true also of the many endorsements by Bar Associations and groups which are claimed for the bill, both by Mr. Gay and by the majority House Report on H.R. 1639.³ An analysis of these endorsements on file with the House Committee on the Judiciary⁴ brings to light the following facts: (1) All of the endorsements of H.R. 1639 (including that of the American Bar Association), with the exception of two hereinafter mentioned, were so worded as to constitute an approval of H.R. 1639 or the principle thereof in its original form, dealing only with the Em-

ployers' Liability Act and suits thereunder; (2) thirty-three Associations or groups expressly endorsed H.R. 242 or H.R. 6345, predecessors of H.R. 1639; (3) one Association endorsed a State bill; and (4) three Associations approved H.R. 1639 in principle but either suggested broadening amendments or raised objections to certain phases of the measure (these will be discussed subsequently). Only two Associations approving H.R. 1639 used language which would suggest approval of a bill dealing generally with civil actions for personal injuries, and this language may have been inadvertent, since the dates of the resolutions involved indicate consideration only of the original version of H.R. 1639.

It is clear, therefore, that the Bar groups have not given their approval to H.R. 1639 in the form in which it passed the House, and it seems fairly evident that none of them, or practically none of them, has given any consideration to the measure in its present form. Mr. Gay's article, as already noted, has not enlightened the Bar on this new aspect of the bill. Consequently, it will be necessary to deal with H.R. 1639 first as it relates to suits by railroad employees, and second, as it deals with other suits for injuries or death.

I. SUITS UNDER THE EMPLOYERS' LIABILITY ACT

With respect to suits by injured railroad employees under the Employers' Liability Act, the terms of H.R. 1639 restrict the venue to a District Court of the United States or a State Court of competent jurisdiction, in the district or county (parish), respectively, in which the cause of action arose, or where the person suffering death or injury re-

3. See House Report No. 613 on H.R. 1639, 80th Cong., 1st Sess. (1947) 2.

4. See partial list, House Hearings on H.R. 1639, 80th Cong., 1st Sess. (1947).

Concerning the Author: Edward James Devitt, member of our Association since 1939, was born in St. Paul, Minnesota, in 1911, and received his degree in law at the University of North Dakota in 1935. He was an instructor in law at that institution until 1939, and practiced law during that period at East Grand Forks, Minnesota, where he was a municipal judge. From 1939 to 1942 he was Assistant Attorney General

of his State, and then went into the Navy for four years as an intelligence officer, in the course of which he received the Order of the Purple Heart. Since 1946 he has practiced law in St. Paul and has taught law at the St. Paul College of Law. He was elected to the 80th Congress as a Republican, from the Fourth Minnesota District. He is a member also of the Minnesota and Ramsey County Bar Associations.

sided at the time it arose.

Mr. Gay's principal reasons in support of this change were as follows:

(1) It will prevent claimants' attorneys from "shopping around" for a favorable forum.

(2) It will eliminate abuses in practice which are prejudicial to local lawyers.

(3) Local Bar Associations cannot prevent unethical practices.

(4) It will prevent the congestion of litigation in certain centers.

(5) It will relieve the railroads of harassment through present "pernicious practices".

(6) Railroad employees are not entitled to any special consideration, and their local forum is the traditional setting for a fair trial of their claims.

It is my earnest belief that not one of these reasons is sufficient justification for the present H.R. 1639.

Bill If Enacted Would not Wipe Out the Evils

My first contention is that the bill, even if enacted in the form proposed, would not wipe out the evils against which it is directed, and hence that purpose alone does not

justify a bill so objectionable as H.R. 1639. Unscrupulous attorneys will still ply their trade and stringently limiting the place where action may be brought only limits but does not eliminate the undesirable practices. Basically, the responsibility for policing the legal profession must rest with the profession itself and with the Courts of which attorneys are officers. Testimony in the hearings on H.R. 1639 brought out the fact that some disciplinary actions had already been initiated. This is as it should be. I appreciate that the

(Continued on page 529)

Statement by Frederick W. Brune, Chairman of Our Association's Committee on Jurisprudence and Law Reform

■ You have very courteously invited me, as the present Chairman of our Association's Committee, to comment on the very interesting and thoughtful article by Congressman Edward J. Devitt on "Venue in Federal Employers' Liability Act Cases". Accordingly, I present some observations with regard to his article, but time does not permit me to attempt to comment on every point. As you will note, there is a considerable "area of agreement", if I may borrow a phrase from the language of diplomacy which does not seem to be overworked just now in its original field. Unfortunately, I have not found it possible to submit these comments to the other members of this Committee before sending them to the JOURNAL.

The present Committee on Jurisprudence and Law Reform devoted a considerable part of its report to the mid-winter meeting of the House of Delegates to the Jennings bill (H.R. 1639). After referring to the status of the bill and to the amendment made in the House of Representatives which extended its operation beyond FELA cases and made it applicable generally to

cases of personal injury or wrongful death in suits against interstate railroads, our report stated:

Your Committee is of the opinion that the chief source of difficulty under existing venue provisions of the Federal Employers' Liability Act is the departure from the considerations of justice, fairness and convenience which are now recognized as the foundation of the rule of *forum non conveniens*. This departure—through the wide choice of forums offered under the FELA—fosters, in our judgment, both the expense and inconvenience of trials under that Act and also facilitates the operations of unscrupulous lawyers who solicit and transport cases on a broad geographical scale. Amendment of the law to restrict venue would, of course, not reform the unscrupulous, but it would curtail their opportunities and would prevent or at least restrict their using the harassment of transporting cases to remote points as a means of sustaining such activities. Your Committee believes that the more important phase of the problem is that concerned with fixing venue at a place or places consistent with the reasonable convenience of parties and witnesses and with a view to avoiding unnecessary expense and also avoiding the burdening of Courts of jurisdictions which do not afford convenient forums.

On the points covered by the above quotation I do not believe

that there is any substantial difference, if there is any difference at all, between Mr. Devitt's views and those of this Committee. There is, however, some difference of opinion as to how to reach this objective. Mr. Devitt's solution is to make suits in the federal Courts brought under the Federal Employers' Liability Act subject to the general venue statute and to continue the provision that State Courts and federal Courts shall have concurrent jurisdiction. The rules of the *Kepner* and *Miles* cases being done



FREDERICK W. BRUNE

Bachrach

away with by such an amendment, then, as Mr. Devitt says, "There would be available as a check against unrestrained and unjustified litigation in distant forums the equitable power to restrain oppressive law suits and the reciprocal doctrine of *forum non conveniens* . . .".

Perhaps the strongest objection to placing the matter of venue in FELA cases in exactly the same position as venue in ordinary civil cases is the one pointed out by Mr. Justice Jackson in his concurring opinion in *Miles v. Illinois Central R. Co.*, 315 U. S. 698, where he spoke of the possibility that an injured railroad worker might be forced to "try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere". A similar possibility would exist in any case in which a motion to dismiss on the ground of *forum non conveniens* had to be fought out as a preliminary to a trial on the merits. The Committee on Jurisprudence and Law Reform mentioned such a possible hardship in its report to the House of Delegates in February and stated its belief "that there could be no serious question that a forum in the State of the residence of the injured party or in the State where the injury occurred would meet the test of a convenient forum" and that "Congressional designation of such forums would seem quite consistent with the general principle of insisting upon a convenient forum". The report went on to say that while fairness might not require that venue be absolutely limited to those jurisdictions, if suit were brought elsewhere it would be reasonable to permit the defendant to seek dismissal or transfer of the case on the basis of *forum non conveniens*.

The resolution as adopted by the House of Delegates, which embodied some amendments to the resolution with regard to the Jennings bill which had been submitted by the

Committee, "reaffirms its approval in principle of the so-called Jennings bill (H.R. 1639, in the 80th Cong.), and endorses, as consonant with that approval, amendments (1) broadening the basis of venue authorized in any case from the county to the State in which the injured person resided or in which the injury occurred, and (2) permitting the application of the doctrine of *forum non conveniens* to actions for personal injury or wrongful death . . .".

It is also my personal belief that the definite fixing of venue (except in such unusual circumstances as those arising from not being able to get service on the defendant) will accomplish more to prevent the solicitation and transportation of cases which has given rise to much complaint under the present law than would the solution proposed by Mr. Devitt, although his solution would, I think, in this respect, be a distinct improvement over the more or less wide-open provisions of the present law.

Mr. Devitt's view that most Bar Association endorsements of the Jennings bill were given before the amendment was added which makes the bill applicable to all suits against railroads for personal injury or wrongful death, is, I believe, correct. However, in the case of the American Bar Association, the House of Delegates was informed of the amendment by Mr. Gay at the Cleveland meeting in September, 1947, at which time he raised the question whether the House wished to give the Committee on Jurisprudence and Law Reform any different direction from that under which it was then operating in supporting the bill under the authorization of the House. No different direction was given, though one member favored going back to the original bill. The present Committee (or at least a majority of it, consisting of all those who have expressed themselves on the specific matter) felt that the mandate of support extended

to the bill as amended. The bill as amended was again brought to the attention of the House by the Committee's mid-winter report and the House again supported the bill in principle by the resolution above quoted. Personally, I do not regard the amendment as of any vital importance in view of the fact that under existing law the doctrine of *forum non conveniens* may be invoked in cases to which the amendment would make the Jennings bill applicable. Mr. Devitt has stated objections to the amendment clearly and forcefully, and for my own part I should agree that the bill would be improved by its omission.

It is perhaps unnecessary to add that the present Committee on Jurisprudence and Law Reform agrees with Mr. Devitt's view that a limitation of venue to the county (or parish) where the injury occurred or where the injured party resided at the time of its occurrence would be unduly restrictive. The House of Delegates, as already stated, took a like view in the resolution which it adopted. That resolution endorsed State-wide, rather than county, venue.

It may be of interest in connection with this whole matter to note that the House of Delegates at its mid-winter meeting approved a recommendation originating with the Committee on Jurisprudence and Law Reform, which grew out of our work on the Jennings bill and which, as revised by the Board of Governors, requested the Committee on Commerce and the Committee on Employment and Social Security to consider whether the Federal Employers' Liability Act should be replaced by a Workmen's Compensation Act. The possibility in the indefinite future of such a change in policy in dealing with accidents to railroad workers does not, in my judgment, detract in the least from the desirability of the present enactment of a bill along the general lines of the Jennings bill to meet existing conditions under existing law.

U. S. Copyright Act: Anti-Monopoly Provisions Need Some Revision

by Sam Bass Warner • Register of Copyrights, Library of Congress

■ This authoritative and well-documented article analyzes the requirements of the American Copyright Act of 1909 and gives the law and practice in other countries on the corresponding points, with especial reference to authors' protection and the resultant "monopoly" aspects. It will thus be found interesting and useful to those lawyers who have to deal with copyrights.

Mr. Warner's discussion also is timely in relation to the future of copyright law. Very much has taken place since 1909 as to magazines, books, newspapers, music, the drama, radio, phonograph records, and other mechanical reproductions of authors' compositions. He suggests that in the light of these changes, some "anti-monopoly" provisions of the American Act need re-study and some revision. At a time when several nations are re-examining their copyright laws and UNESCO is studying the subject and may undertake the drafting of a model copyright act, we are privileged to publish this "background" article by the Register of Copyrights.

■ Copyright is a monopoly, an exclusive right granted to authors for a limited period to copy and perform their works in order "to promote the progress of science and useful arts".¹

Most copyright laws grant this monopoly to authors for a long period of years—in the United States for two terms of twenty-eight years each,² and in many other countries for the

life of the author and fifty years thereafter.³ Except for its limited duration, the author's right in literary property is often as absolute as rights in other varieties of property, and is conceived of as a property right of like nature and validity.⁴

This theory was not, however, the one embodied in the first copyright law in the Anglo-American world, the Statute of Anne of 1710.⁵ That Act recited as its purpose the prevention of literary piracy and "the encouragement of learned men to compose and write useful books". It granted authors an exclusive right to publish their books for fourteen years on condition that their titles be entered in the register book of the Company of Stationers. Nine copies

NOTE: The author wishes to acknowledge the assistance of Dr. William S. Strauss on the notes as to the law of Belgium, France and Italy, and of Mrs. Helen L. Clagett for those relating to Argentina and Mexico.

1. Constitution of the United States, Art. 1, Sec. 8.
2. 17 USC § 24.

3. Ladas, S. P.: *International Protection of Literary and Artistic Property* (1938), Sec. 150. In all the countries listed below, except Argentina and Mexico, the copyright period for most works is the life of the author plus 50 years, but as indicated, there are many exceptions.

ARGENTINA: Law No. 11,723, provides life plus 30 years for most works, but only 20 years for photographs, 30 years for motion pictures, life plus 20 years for letters, 30 years for anonymous works, and 15 for a publisher, if the author dies without successors or assigns.

BELGIUM: Law of 1886, Sec. 2, Art. 11, allows only 50 years for such government publications as are copyrightable.

ENGLAND: Copyright Act, 1911, Sec. 18, 19, and 21, specifies 50 years in the case of government publications, records and photographs.

FRANCE: Law of 1793, Art. 1 and 2 as amended by the Law of 1866. Art. 2 of the Law of 1791 limits theatrical rights to five years after the death of the author.

ITALY: Copyright Law of 1941, Art. 25. Art. 29 allows 20 years for some government publications and two years for certain publications of learned societies. Art. 32 provides 30 years for motion pictures and Art. 92, 20 years for photographs.

MEXICO: Law of 1947, Art. 8 and 9, extends copyright for 20 years after the death of the author, except that the right to translate a work into Spanish becomes public property if not exercised by the author within three years.

4. Blackstone: 2 Com. 405; Ball, H. G.: *Law of Copyright and Literary Property* (1944), Sec. 6; Ladas, S. P.: *International Protection of Literary and Artistic Property* (1938), Sec. 1-5.

ARGENTINA: Law No. 11,723 of 1933, Art. 6. When a deceased author's work has been out of print for 10 years, anybody may republish it upon the payment of a fair royalty. Ten years after an author's death, anybody may translate his works upon the payment of a fair royalty.

BELGIUM: Law of 1886, Art. 20. Neither the author nor the owner of a portrait has the right

to reproduce or exhibit it publicly without the consent of the person represented or his assigns, during a period of 20 years after his death. Law of 1921, Art. 1, contains a provision similar to the French law referred to in this note.

ENGLAND: Copyright Act, 1911, Sec. 3 and 4. After 25 years from the death of the author any person may publish the work upon payment of 10 per cent royalty. If after the death of an author his published work is withheld from the public, a compulsory license may be ordered for its reproduction or public performance.

FRANCE: Law of 1920 as amended in 1922 gives the creator of a plastic work a right to a percentage of the proceeds whenever, after alienation by him, it is sold at public auction.

ITALY: No limitations found.

MEXICO: Federal Copyright Law of 1947, Art. 25, 30-34. A photograph of a person may not be published or exhibited without his consent. If a work is considered indispensable for the promotion of the national welfare and no copies have been available for a year or are too high priced, the Government may order it republished. In such a case, royalties must be paid.

5. 8 Anne c. 19.



Harris & Ewing

SAM BASS WARNER

of each book had to be supplied for the use of the leading libraries. There were also elaborate price-control provisions.

The Congressional Committee which sponsored the United States Copyright Act of 1909 likewise believed the purpose of copyright to be the public interest in the promotion of science and the useful arts. They realized that it was a monopoly to be granted to authors for a limited period, in order to encourage intellectual productivity, but also recognized the importance of placing limitations on this monopoly, which otherwise might do more harm than good. The Committee said:⁶

The enactment of copyright legislation by Congress under the terms of the Constitution is not based upon any natural right that the author has in his writings, for the Supreme Court has held that such rights as he has are purely statutory rights, but upon the ground that the welfare of the public will be served and progress of science and useful arts will be promoted by securing to authors for limited periods the exclusive rights to their writings . . .

First, how much will the legislation stimulate the producer and so benefit the public; and second, how much

will the monopoly granted be detrimental to the public? The granting of such exclusive rights, under the proper terms and conditions, confers a benefit upon the public that outweighs the evils of the temporary monopoly.

"Anti-Monopoly" Provisions in the U. S. Copyright Act

The provisions inserted in the Copyright Act of 1909 to mitigate the evil effects of the monopoly are:

1. Variations in the scope of the monopoly, depending upon the nature of the writing.
2. Requirement of a copyright notice on each published copy of the work.
3. Provisions for registration and for deposit of copies.
4. Compulsory licensing of the manufacture of musical records.

The difference between the rights granted to authors in books, music, and dramas well illustrates the manner in which Congress balanced the public interest in the free use of literary materials against the need of giving authors a sufficiently broad monopoly to stimulate productivity. Experience had shown that the exclusive right to reproduce a book in written form, including translation and dramatization, was all the protection needed to induce the writing of useful books. Therefore, these are the only rights which the Copyright Act grants to the authors of books.⁷ Anybody may make his living, if he can, by reading in public *The Devil and Daniel Webster* and

other interesting stories without securing permission from the owners of copyrights. A person does not even violate copyright if he puts such a work on a phonograph record or broadcasts it over the radio.⁸

Composers of music have long been accustomed to earn their living by giving concerts as well as selling sheet music. By 1909 the sale of phonograph records was commencing to be an additional source of revenue to them. The Act therefore gave composers, in addition to publishing rights, the exclusive right to perform their compositions publicly for profit and to put them on phonograph records. But their exclusive performing rights are limited to public performances for profit, so as not to interfere with churches, schools and groups that give music to the public free of charge.

Only to dramatists is given the exclusive right to all public performances, whether for profit or otherwise. If they were not given this protection, free public performances might materially reduce their potential audiences.

U. S. Copyright Act Not Unique But May Need Revision

The American Copyright Act is not unique in adapting the nature of the right to the class of the work. Such variations exist in the copyright laws of England, France, Argentina, and a number of other countries,⁹ but those in the United States Act are greater than are found in the statutes

reproduce an article published in another unless reproduction is expressly prohibited. Exclusive rights in all other works are obtained without any express prohibition of reproduction. See also Note 4.

ENGLAND: Copyright Act, 1911, Sec. 1 (2 and 3), 2, 9, and 20. It is a violation of copyright to deliver without the consent of the copyright owner lectures in public, but not other works. What constitutes publication and infringement differs with the nature of the work. All the usual remedies are not available for infringement by works of architecture.

6. U. S. House of Representatives, 60th Congress, 2d Session; Report No. 2222, page 7.

7. 17 USC § 1.

8. Howell, H. A.: *The Copyright Law* (1942), page 129. See also *White-Smith Music Publishing Co. v. Apollo Co.* (1908), 209 U. S. 1; and *Corcoran v. Montgomery Ward & Co.* (1941), 121 F. (2d) 572.

9. ARGENTINA: Law No. 11,723 of 1933, Art. 22 and 34. Information not required for other varieties of works must be stated on photographs and motion picture films.

BELGIUM: Law of 1886. The only difference noted is that Art. 17 permits one periodical to

Concerning the Author: Sam Bass Warner, member of our Association since 1922, was born in Chicago in 1889. His college and law degrees were from Harvard. After working as a law clerk in San Francisco, he became a professor of law at the University of Oregon, Syracuse University and Harvard Law School, successively, and was a visiting professor at Northwestern and Columbia. In 1917-18 he was a second

lieutenant as an aerial observer in the Army. He was a member of the staff of the Harvard Crime Survey in 1927-35 and reporter for the Interstate Commission on Crime. He is the author of *Crime and Criminal Statistics in Boston* (1934), and with H. B. Cabot he wrote *Judges and Law Reform* (1936). In politics he is a Republican. He has been Register of Copyrights since February of 1945. *

of most other countries and seem more clearly designed to keep copyright from applying to situations in which it would create no inducement to authorship commensurate with the public inconvenience and burden.

The exact limitations on the rights created by the American Copyright Act for various types of writings may well need revision. The Act speaks from 1909, with only a few piecemeal revisions since that date. In the intervening decades the growth of radio and motion pictures has added materially to the varieties of writings and to the ways in which writers may earn a livelihood. Nevertheless, the principle that the copyright monopoly should vary with the nature of the work and be no broader than needed to further the public interest in fostering the creative instinct is just as valid today as it was in 1909.

Strict Legal Requirement as to Notice of Copyright

Probably the most distinctive feature of our Copyright Act is the requirement that all authors who desire copyright protection must place the requisite notice of copyright on each copy of their work which they offer to the public and must register their works in the Copyright Office.¹⁰ The present Act, like its predecessors, is very specific in its requirements of notice. The notice must be put in a certain place—in the case of books on the title sheet. A notice on the page facing the title page, or on the last page of the book, or in any other place, is invalid. The notice must be in a certain form. The only "open sesame" for copyright of books is the word "copyright" or its abbreviation "copr.", together with the name of the copyright proprietor and the year of publication.¹¹ 1909 was in the era of strict law. If the Act were being redrafted today, undoubtedly more leeway would be given as to the place of the notice and its phraseology.

The purpose of the copyright notice is, of course, to enable the reader to determine whether a work is under copyright protection, and if it is, to assist him in locating the copyright owner. If all works were copyrighted,

the presence of a copyright notice would serve only the second purpose. Practically all United States works whose re-publication will bring financial returns to an author or publisher are copyrighted. Nevertheless, from the point of view of either numbers or of social and scholarly interest, copyrighted works are in the minority.

Extent of Copyright as to American Publications

Almost all the publications of the American book trade are copyrighted each year, as are also nearly all motion pictures and published music, together with many thousands of pieces of unpublished music.¹² The Copyright Act forbids the copyrighting of publications of the United States Government.¹³ Very few State, county or municipal publications are copyrighted. Less than one-half of one per cent of the newspapers are copyrighted, though many columnists and comic strip writers copyright their products separately, so that they will be protected even when appearing in an uncopyrighted newspaper. N. W. Ayer & Son's *Directory of Newspapers and Periodicals* for 1948 lists 20,246 newspapers and periodicals as published in 1947, but this directory purports to cover only part of the field. The total number of newspapers and periodicals is much greater, probably well over a hundred thousand. The number copyrighted in 1947 was approximately 4200. Of course, the few thousands of foreign works copyrighted each year are but an infinitesimal fraction of the number published.

In the absence of figures of literary output for the United States or for the world, the number of copies of works received each year by the Library of Congress probably gives the best available indication of at least that part of the output which influences American culture. In comparing these figures with the number of copyrighted works, it must be remembered that the Library of Congress receives many duplicates and books published in former years, and

that only about half of the copyright registrations are considered of sufficient cultural significance to be turned over to the Library. In 1947 the Copyright Office registered 230,215 works and the Library of Congress received 6,789,169 items.

Copyright Affects Availability of Material to the Public

Whether a work is copyrighted or not is likely, as a practical matter, to make all the difference as to its availability to the general public. A writer who wishes to copy from an existing work may do so if the work is not under copyright. If it is, he must locate the owner of the copyright and get his consent. Even if a would-be reader has no access to a great research library, he can secure from such a library photostats of the material he desires. That is, he can do so, if the material is not copyrighted. The Library of Congress last year photostated 94,815 items for applicants and refused to photostat 2392 because of copyright restrictions.

If a work is copyrighted, this often prevents interested persons not only from copying it, but even from securing it. The obstacle is not that authors and other copyright owners are unwilling to permit photostats to be made, but that they cannot be located. Individuals die or move away without leaving an address at which they can be located ten or twenty years hence. Corporate copyright owners go out of business and give up or lose their charters without assigning their copyrights. It is nearly

FRANCE: Law of 1917, Art. 2. Reproduction without the consent of the composer is permitted of incomplete tunes by certain "music boxes" or similar instruments. See also Note 3.

ITALY: Law of 1941, Art. 93 and 94. Publication of letters requires the consent of both the author and the addressee.

MEXICO: Federal Copyright Law of 1947, Art. 19 and 25. If reports of news events in newspapers or magazines are reproduced, the source must be stated. Reproduction is forbidden if the work contains a notice to that effect. There are also special provisions relating to the publication of photographs.

10. 17 USC §§ 11-14.

11. 17 USC §§ 10, and 19-20; Howell, H. A.: *The Copyright Law* (1942), Ch. 7.

12. The number of copyrights registered each year is given in the *Annual Report of the Register of Copyrights*. Statements of percentages of published works that are copyrighted are estimates based on checks made in the Copyright Office.

13. 17 USC § 8.

always possible to locate the missing owners or get successors in interest appointed, but the cost is nearly always so great as to make this solution impracticable.

Some individuals, and even a few libraries, violate the Copyright Act, in the interest of the inexpensive and rapid dissemination of knowledge, and take their chance that the copyright owner will not learn of their acts and decide to subject them to the heavy penalties for copyright infringement. However, by and large, such action is unusual. When once a work is out of print and available only in libraries, the net effect of the Copyright Act is to retard its circulation. Each year thousands of such works are not read or copied because they are copyrighted.

The restrictive effect of copyright on the movement of works into the stream of the scientific and cultural life of our country is to be regretted. It is the price we must pay for copyright. The progress of literature, science and the useful arts would be still more retarded if there were no copyright. Then writing would be merely an avocation, because no author would have the exclusive right to the products of his pen and so be able to collect royalties for their use. Nevertheless, the need to restrict the use of copyrighted works for the encouragement of authorship, does not justify hampering the free flow of

uncopyrighted works. Hence it is important to require a copyright notice on the ten per cent or less of the works that are copyrighted to distinguish them from the ninety per cent or more that are not.

Advantages of the Registration of a Copyrighted Work

In addition to the requirement of the appropriate notice in every copy of the copyrighted work offered for sale, the Act requires registration in the Copyright Office.¹⁴ The advantages of registration to the author are greater ease in proving his claim, the right to sue in the federal Courts, higher minimum damages than he is likely to be able to prove,¹⁵ and in some cases greater salability for his composition. For example: A number of music publishers refuse to consider a manuscript unless it is accompanied by proof that it has been copyrighted.

In the case of assignments, registration has the advantage of giving a title good against prior unrecorded transfers to a *bona fide* purchaser from the owner of record.¹⁶ By improving the legal title which the purchaser receives, registration adds to the price he can afford to pay the author, in the same manner that acts requiring the registry of deeds to real property make it more salable. To the general public the advantage of registration is the availability in

the Library of Congress of all the important literary works of the United States and many of those of foreign countries. To anybody interested in buying rights in copyrighted works, the Copyright Office in the Library of Congress serves as a veritable clearing house of information.

Absence of a Copyright Notice Puts a Burden on the Public

In many countries, the law does not require a work to contain either a copyright notice¹⁷ or any clue to its author, its publisher, or its place or date of publication.¹⁸ Nevertheless, the pride which authors and publishers have in their works nearly always leads them to insert their names.

The burden which the absence of a copyright notice on the work causes the public is often alleviated in various ways. For example, many countries require that several copies of each copyrighted work be deposited so that copies may be sent to a number of libraries.¹⁹ If the country is small, the distance of any would-be user from one of these libraries may be so slight as to make the need for photostats negligible. Further, custom or law may permit copying except in publications or public performances.²⁰ Permission to copy for the latter purposes may be easy to obtain, due to an almost universal practice of turning over to authors' societies the right to give per-

14. 17 USC §§ 6, 11-15, 17, 24, and 30-31.

15. 17 USC §§ 101-104, 110-112, 116, and 209-210.

16. 17 USC § 30.

17. ARGENTINA: Publishers almost always insert a notice though no statute requires it.

BELGIUM: Law of 1886, Art. 14. No notice is required.

ENGLAND: Copyright Act, 1911. No notice is required.

FRANCE: Law of 1943, Art. 1. All copies must bear the name of the printer or producer, his place of residence, the month and year of production or publication, the words "*dépôt légal*" followed by the quarter of the year in which deposit was made and number of the work in the series of the printer and of the publisher. New printings must also state the year in which they were made and the date of the original deposit. The Law of 1925, Art. 2, required only the name of the printer or producer, his place of residence, and the year of edition or production. The penalties for non-compliance, as provided in Arts. 12-13, are cost of copies, confiscation and fine.

ITALY: Law of 1941, Art. 101. No notice is required, except as to newspapers.

MEXICO: Federal Copyright Law of 1947, Art. 27. The term "*Derechos Reservados*" or "*D. R.*," followed by the name and address of the copyright

owner, must be used. The penalty provided by Art. 120 is a fine.

18. ARGENTINA: Law No. 11,723 of 1933, Art. 63. The date and place of publication, the edition and the name of the publisher must be stated.

BELGIUM: See Note 17.

ENGLAND: Copyright Act, 1911, Sec. 6. Presence of name of author or publisher on the work creates presumption of copyright ownership, but is otherwise unnecessary.

FRANCE: See Note 17.

ITALY: See Note 17.

MEXICO: Federal Copyright Law of 1947, Arts. 54, 55, and 56, require the name and address of the publisher and of the printer, the date of publication, the number of copies printed and the retail price. Translated works must carry the title in both languages. For additional requirements, see Note 17.

19. ARGENTINA: Requires the sending of three copies.

BELGIUM: Law of 1886, Art. 4 and 11, requires registration of posthumous works and copyrightable government publications only.

ENGLAND: Copyright Act, 1911, Sec. 15. In Great Britain the publisher must send a copy of every book, pamphlet, sheet of letter-press or music, map, plan, chart, or table to the British Museum and on demand to five other libraries.

There is no requirement for the deposit of motion pictures, photographs, records, models, paintings, and works of sculpture or architecture.

FRANCE: Law of 1943, Art. 1-3, etc. Two copies of most works must be deposited by the printer or producer and five by the publisher. In addition there are the administrative or judicial deposits required by the Law of July 29, 1881.

ITALY: Law of 1941, Art. 103-106, and 154. One copy of the work and certain assignments of rights must be filed.

MEXICO: Requires sending two copies. See note 22.

20. ARGENTINA: Law No. 11,723 of 1933, Art. 10, 27, and 28. For the purpose of teaching or science, quotations up to 1000 words or eight bars of music may be published without the consent of the author. Neither is his consent required to quote news reports, but the source must be stated.

BELGIUM: Law of 1886, Art. 13. Quotations for critical, polemical or educational purposes are permitted without the consent of the author.

ENGLAND: Copyright Act, 1911, Sec. 2 and 20. Among other things, the following are permitted without authorization: the publication in a newspaper of a report of an address of a political nature delivered at a public meeting; any fair dealing with any work for the purposes of private study, research, criticism, review or newspaper

missions and to make collections.²¹

The requirement of deposit of copies exists in a large number of countries and is enforced by varying penalties.²² The degree of enforcement also varies in different countries. In England and a number of other countries, the requirement seems to be almost universally complied with, as it is in the United States.²³

Giving to Composers Control of Mechanical Reproductions of Their Music

Another monopoly problem with which the Congressional committee wrestled was how to give composers the exclusive right to control mechanical reproductions of their music without paving the way for a monopoly in the manufacture of music rolls, phonograph records and other forms of mechanical reproduction. In 1909 the Company Fonotipia of Milan, Italy, had a practical monopoly of the business of producing music by mechanical means in that country and was reaching for world monopoly. As the Committee Report in our Congress expressed the matter:

It was at first thought by the committee that the copyright proprietors of musical compositions should be

given the exclusive right to do what they pleased with the rights it was proposed to give them to control and dispose of all rights of mechanical reproduction, but the hearings disclosed that the probable effect of this would be the establishment of a mechanical-music trust. It became evident that there would be serious danger that if the grant of right was made too broad, the progress of science and useful arts would not be promoted, but rather hindered, and that powerful and dangerous monopolies might be fostered which would be prejudicial to the public interests.²⁴

Considerations Leading to Provisions as to Manufacturing of Records

This consideration lead to the enactment of the provision that a composer of music need not allow any record manufacturer to make records of his copyrighted work, but that if he allowed one record manufacturer to do so, any other might do likewise upon the payment of a two-cent royalty for each record manufactured.²⁵

It is uncertain whether, at the present time, a repeal of this provision would lead to an American, and perhaps a world, monopoly in musical records. There is much expert opinion that it would. It is said that the hold on public fancy of a few popular music bands is so great that

if one company could get them under contract, enough of the leading composers of popular music would give it an exclusive license to put most other companies out of business. Even if such a provision is still needed as a protection against monopoly, increases in the size of records and the emergence of wire recording and other new techniques indicate the desirability of a change in the wording of the provision, if it is not to become unfair to composers.

"Anti-Monopoly" Provisions of U. S. Statute Should Be Restudied

UNESCO is about to undertake a study of copyright and perhaps prepare a Model Copyright Act. Italy, Japan, and doubtless other countries, are contemplating revisions of their copyright laws. The conditions of the post-war world are making the negotiation of new copyright treaties inevitable. In all these undertakings, the interests of both authors and ultimate consumers should be given consideration, and monopolies in the exploitation of the creations of authors should be avoided. To further these ends, the anti-monopoly provisions of the United States Copyright Act merit careful study.

summary; and the reading or recitation in public by one person of any reasonable extract from any published work.

FRANCE: Short quotations are permitted. (Berthier: *La Protection Legale du Compositeur de Musique*, Paris, 1936, page 64. See also decision of the Trib. Com. Seine, 26 June 1934 in *Le Droit d'Auteur*, 1935, page 81). Otherwise the provisions of the Law of 1793, and the Penal Code, Art. 425, 426, and 427 are applicable.

ITALY: Law of 1941, Art. 67, allows reproduction by judicial and administrative agencies for legal purposes. Article 70 permits citation and reproduction of parts of works for the purpose of critique, discussion or instruction, if not done for profit. Article 71 permits military bands to play music without paying royalties if the performances are not for profit.

MEXICO: Federal Copyright Law of 1947, Art. 3. Brief extracts may be copied without authorization from scientific, literary, or artistic works for literary criticism, scientific research or use in textbooks. The source must be stated. If reasonable efforts do not result in the location of the copyright owner, his consent is unnecessary for the incidental use of his work in photography, radio, motion pictures, etc., but not in advertising.

21. ARGENTINA: No provisions on authors' societies.

BELGIUM: Practically the same as in France. (Poirier, Pierre: *Le Droit d'Auteur*, Bruxelles, 1936, page 110, par. 82).

FRANCE: Societies of authors, artists and composers are often intermediaries between the author and a publisher or user. They are not assignees of the authors, but their agents and representatives with power to contract and sue in their names. (*Pandectes Francaises*, Vol. 48, page 203, par. 1695). They are recognized as public utilities (Law of 1884, Art. 2-4, and Decree of 1891) vested with a general power to supervise and exploit the right of the author.

ITALY: The Society for the Protection of the Rights of Authors is set up as exclusive intermediary between authors and users of their works. (Law of 1941, Art. 180-184). Although reference is made in these articles to the fascist authorities, they do not seem to be abrogated by any post-war provision and would appear to be still in force.

MEXICO: Federal Copyright Law, 1947, Art. 69 (III), 70 (II), and 74. The General Mexican Society of Authors and the local author associations are empowered to act as intermediaries to contract, collect, and make contacts with groups of users.

22. ARGENTINA: Law No. 11,723 of 1933, Art. 30, 53, 57, 61-63 and 66. All published works must be deposited and unpublished works may be. Transfers of copyright and assignments must be registered. If a publisher fails to deposit, he is fined. If an author does likewise, he loses all exclusive rights until registration is made. Decree No. 15,002 of 1946 requires publishers to deposit

within three months. Decree No. 18,408 of 1943, as amended by Decree No. 11,877 of 1945, requires that additional copies be sent to the Department of Press and Propaganda.

ENGLAND: Copyright Act, 1911, Sec. 15(6). Value of the book and fine not to exceed £5 to be paid to the library to which the book should have been delivered.

FRANCE: See Note 17.

ITALY: Law of 1941, Art. 105. Deposit is enforced by a fine and the possibility of the seizure of copies of the work.

MEXICO: Federal Copyright Law of 1947, Art. 62, 99, 101, 105 and 106. All works published or reproduced in Mexico must be registered. Three copies must be sent to the Copyright Department, of which one will be returned.

23. The opinion of the United States Copyright Office, based on sampling and checking over a long period of years, is that only an insignificant number of American books bearing copyright notices are not deposited. We are informed that the officials of the British Museum believe that the English law is equally well observed. Mr. S. P. Ladas reports that in some countries the requirement of registration is often ignored. See *The International Protection of Literary and Artistic Property* (1938), page 275, note 40.

24. U. S. House of Representatives, 60th Congress, 2d Session; Report No. 2222, page 7.

25. 17 USC § 1.

A Law Center in Illinois:

Plans and Dreams for the "Mind's Eye"

by Albert J. Harno • Dean of the College of Law, University of Illinois

■ Recently the *Journal* asked Dean Harno to write concerning the plans of the College of Law of the University of Illinois for a Law Center at Urbana. The *Journal* is keenly interested in even the preliminary and exploratory stages of projects which may help legal education to serve better the profession and the public—in every part of the country, not merely in large cities. Dean Harno replied that if it would be all right for him to present a few facts and supplement them liberally with plans and dreams, he would be glad to give us a report. Evidently he considers that his school has a program rather than a project in being—a Law Center that is "a design for the mind's eye"—a goal toward which the school is working, not an institution which will come into being with full plant and facilities at one time. The most significant thing about Dean Harno's concept seems to us to be the philosophy and purposes which activate it at this stage.

■ Some phases of the program I am about to describe are in being. Others, though on paper, are still in the dream stage. I shall seek faithfully to discriminate so that the reader may see when facts leave off and dreams begin, but that may be difficult. Dreams sometimes have a way of doing queer things to the dreamer, and they may even have for him all the appearances of reality. Well-conceived plans should have premises and goals. The premises for these observations are that law and its observance are of the essence in any enlightened civilization, and that government under law which involves a fair measure of freedom for the individual presupposes a strong and independent legal profession. What I shall have to say will touch legal education and research. The goals are to make the highest contribution possible through education toward building of a strong

Bar and to give that Bar through research sound timber with which to build.

Curiously enough, when one speaks of legal education, he is taken to mean something that is confined to a law school. It should have a much broader connotation. Legal education, as I see it, is a lifetime undertaking. So conceived, the period which a lawyer spends in law school is but a phase of the sum-total of his education. I should not date the beginning of a legal education even at the time the neophyte enters the portals of a law school. That marks the starting-point of his formal law studies, but the education of a lawyer does not commence there. It has its beginnings long before that. I do not wish to press this point too far. Clearly, though, the cultural foundations the prospective lawyer lays in his pre-law school period and the skills he then masters have im-

portant bearing on what sort of lawyer he will become. That subject has received all too little attention, but I would be taking unwarranted license if I explored it here. My subject deals with education and research in and through the facilities of a law school. My remarks on education will center on the law-school phase of a lawyer's training but will touch also on his post-law-school training.

Law Center Should Recapture Advantages of Apprenticeship System

If one were to compare the apprenticeship system, through which men prepared themselves for the Bar in the past, with the means for legal education afforded by the better law schools today, most observers would agree that the present system is superior. It must be acknowledged, however, that the apprenticeship system produced some remarkable lawyers—men who measured up to the highest traditions of the profession, not only in the legal skills they displayed, but in breadth of outlook, vision and statesmanship.

I have been reading Lloyd Stryker's *For the Defense*, a biography of Thomas Erskine. Every lawyer ought to read that book. It is a moving account of the valiant fight of a great lawyer in shaping and defending civil liberties for Englishmen, and indeed for freedom-loving

people everywhere. In this book Stryker pays a glowing tribute to the Inns of Court and to the apprenticeship system in force in Erskine's day. In the Inns of Court, according to Stryker, "the English profession of the law was born and the English legal system was reared and nurtured".

In our plans for a Law Center at the University of Illinois, it is our hope to recapture for legal education some of the factors that distinguished the apprenticeship system of the past. The plans include the following features: (1) Courses for lawyers which will also be open to law students; (2) legal research; (3) a magazine which will be a vehicle for education both for law students and members of the Bar; and (4) a center providing physical facilities and atmosphere for these activities, including a law building and residence halls where law students may work, eat, and live together, and where they may meet with lawyers and hear discussions on current topics of the law by lawyers. Another possible phase of this program has to do with post-law-school training of the apprenticeship type for young lawyers, but that feature is a bit too nebulous at the moment for discussion.

Program of Courses for Lawyers Has Been Launched

The program of courses for lawyers has been launched. After conducting some experiments, we sought and received University approval and budgetary support for these courses as an integral part of the program of the Law School. Last fall, under the direction of a member of the staff, a course was given on labor relations, with emphasis on the Taft-Hartley law. A second course, this

one on taxation, was conducted in February. The leaders for the discussion were carefully selected members of the Bar and law teachers. A third course is planned for the late spring.

Programs of this sort are, of course, not new. They had their inception with the American Bar Association and were nurtured and developed through the Practising Law Institute and various State and local Bar Associations. At the moment an extensive program touching them is in the making under the aegis of the American Law Institute, working in cooperation with the American Bar Association. The contribution which the University of Illinois hopes to make is to combine a program of education for lawyers with a program of education for law students. The courses described are being conducted on the campus where they are open to law students. The plan is to provide opportunities for law students to meet with members of the Bar, and to provide a forum where they may hear the leaders of the Bar debate the emerging and provocative issues currently before the profession.

A Magazine on Current Legal Problems Is Part of the Program

The publication of a magazine is to be one of the features of our program. There is nothing unusual about a law school publishing a magazine. Many law schools are publishing law reviews, and some of them are very good. If we have anything distinctive to offer in this field, it relates to the fact that the publication we are planning is conceived to become a part of the general program I am describing.

What we propose is a magazine that will deal with current legal and socio-legal problems. The emphasis



ALBERT J. HARNO

will be on matters of interest to lawyers and particularly to the lawyers of Illinois. This statement in the estimation of some may classify us as being provincially-minded. We have no intention of becoming provincial. The profession in Illinois is interested in many currently developing legal matters that transcend the boundaries of the State of Illinois. The fact remains, notwithstanding the expanding scope of federal laws, that a lawyer's interests and his legal practice center largely in the laws of his State. Our thesis is that there is a distinct place for a legal publication which devotes a substantial portion of its space to the clarification and molding of the laws of the State in which it is published.

Development of the Law of Illinois Will Be Emphasized

We must, I take it, recognize a difference between the development of law and that of science. If a noteworthy discovery is made in chemistry, physics, or medicine, it will receive recognition by experts and scholars the world around. If it is a genuine discovery it holds good everywhere.

Concerning the Author: Albert James Harno, member of our Association since 1924 and one of its tireless workers on many projects, was born in Holabird, South Dakota, in 1889. He was graduated from Dakota Wesleyan University and the Yale Law School. Admitted to the California Bar, he practiced law in Los Angeles for three years. He taught law in Kansas, came to the University of Illinois as a professor of law in 1921, and became dean of its Law School the following year. In 1941-42

he was president of the Illinois State Bar Association. In our Association he has been Chairman of the Section of Legal Education, has served on many committees in his fields, and is the Secretary of the independent Council for the current Survey of the Legal Profession. A stimulating writer as well as an objective analyst of facts and trends, he enjoys to an unusual degree the affection and respect of law teachers and practicing lawyers throughout the United States.

This observation cannot be applied so clearly to law. Law has a *locus*. Its development is confined within jurisdictional boundaries. The legal profession in matters of law improvement, aside from the national scene, directs its attention to the Courts of the State and to the State legislature. We plan in the magazine we are projecting to deal with questions of national and international scope, but the emphasis will be on the development of the law of Illinois.

In searching out questions meriting attention in the magazine, we have invited the aid of an advisory committee of lawyers. This group will assist us not only in choosing topics for consideration but also in finding individuals qualified to write on them. Each issue of the magazine will be devoted to a single main topic which will be divided into several sub-topics. A separate contributor will deal with each of the sub-topics. A board of student editors will aid in the publication of the magazine and there will be a section in it for student comments.

Plans Contemplate Group Research in the Law

Another phase of the program involves research. The legal profession is one of the learned professions. It has many votaries and an immense amount of literature, and yet it is relatively unproductive in research. The practicing lawyer finds his time taken up with the problems of the practice. He is an advocate and finds little time or inclination for research. The opinions of the Courts involve a type of research but are focused on comparatively narrow issues. The fact is that what legal research there is today comes, for the most part, from a few law schools.

It is our plan, as one of the features of the program I am describing, to develop a center where scholars may carry on their individual research, but where the emphasis will be placed on group research. The trouble is that there are too few individuals carrying on significant research, either as individuals or as a member of a group, and there is all too little of it that is fruitful in assisting a perplexed society in solving its legal problems. If government under law is to reach its fullest development, haphazard and hunch legislation must give way to legislation founded on research. This calls for planned and group research. There is a high degree of sensitivity and individuality about the scholar; he cannot be harnessed. Many scholars will work only by themselves and they should be given free rein. But this does not mean that group research is not feasible or desirable. Group research can be highly productive, and in the more complex socio-legal areas it is essential. The solution of problems in these areas calls for the joint work of a variety of scholars. The law schools, it would seem, must become centers on a scale much vaster than anything now in progress for programs of this sort.

Unity in Program and Planning Is the Idea of a Law Center

I have been describing what may appear to be more or less unrelated matters. We do not view them in that light. Each, according to our conception, is a phase of a general program of education and research. Together they are a unit and this unit is our idea of a law center. The plan contemplates a program of education for students both in and

out of the classroom. Law students have a natural urge to discuss the concepts and issues germinated in the classroom. Our plan envisages that they will live together in residence halls and that this will provide the setting for exploring the potentialities of education outside of the classroom. Into this atmosphere we plan to introduce a program of courses for the members of the Bar. Lawyers who attend these courses would find living accommodations at the center and their discussions would be open to students. We thus expect to make a program of education for lawyers also a means of education for law students. The magazine would be a further agency for the education of students and it would be the vehicle through which the center would reach a wider public. Programs of research would heighten the intellectual excitement at the center and the materials of research would be the center's contribution to law improvement.

This program, if it is to be brought to its fullest development, requires a physical as well as an intellectual setting. We now conduct our work in Altgeld Hall. This building does not offer the facilities for carrying out the concept I have portrayed. I must now resort to a bit of dreaming. In truth, this phase of our plans has somewhat more substance than the stuff dreams are made of; but it is, to describe the situation perhaps more accurately, substance affected with dreams. The buildings which will provide the setting and atmosphere for the educational and research activities described are projected on paper. The request for them has been documented and lodged with the proper authorities. The outcome rests with the gods.

The Corfu Channel Case:

Significance of First Ruling by Present Court

by **Manley O. Hudson** • Former Judge of Permanent Court of International Justice

■ When the International Court of Justice entered upon the hearing of its first case since the outbreak of World War II (see 34 A.B.A.J. 398; May, 1948) and gave its decision on the preliminary questions raised as to its jurisdiction, the *Journal* asked Judge Manley O. Hudson to write for us concerning the long-run significance of the resumption of the judicial activity of the World Court, as well as of the ruling made in the pending case. This he has done authoritatively and interestingly in the following article which will be widely noted.

His comment deals with the juridical aspects. There are some others. With the addition of an *ad hoc* judge designated by Albania as a party litigant who is not a party to the Statute of the Court and is not represented in the personnel of the present Court, the august tribunal consisted of sixteen members. All of the regular members of the Court, included Judge Krylov of the Soviet Union, joined in holding that the Court had jurisdiction of the dispute. An able dissenting opinion was filed by the Albanian *ad hoc* judge; the fifteen regular members were unanimous as to the result. However, seven members of the Court joined in a separate opinion which expressed views that went further than the majority ruling. President J. Gustavo Guerrero, Judge Hackworth of the United States, Judge Read of Canada, and Judge McNair of the United Kingdom, were aligned with the majority views. "Eight-to-seven" reminds of "five-to-four".

Proceedings to continue the hearing on the merits of the dispute were directed by the Court to take place early in the fall. Although the judgment of the Court is, as Judge Hudson calls it, "a valuable addition to the jurisprudence concerning the jurisdiction of the Court", the issues raised by the Albanian objections are no longer controversial in the case. It has been reported from The Hague that Albania and the United Kingdom have entered into a special agreement which confirmed the jurisdiction of the Court as to the dispute.

The World Court also has under consideration for the first time in its history a request by an organ or agency of the United Nations, in this instance the General Assembly, for an advisory opinion interpreting the Charter. The questions have to do with the conditions of admission of new members to the United Nations (see 34 A.B.A.J. 55; January, 1948). Oral argument has been had before the Court. Argument for the Secretary-General was made by Dr. Ivan Kerno, Assistant Secretary-General (legal), who addressed the 1946 Annual Dinner of our Association at Atlantic City (32 A.B.A.J. 839; December, 1946). The *Journal* has asked Judge Hudson to write for us concerning that ruling also, when it is rendered and received.

■ The resumption of the judicial activity of the World Court after a lapse of eight years gives occasion for rejoicing to the legal profession throughout the world. On March 25, 1948, the Court handed down its first judgment since its reorganization, in the case between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of Albania (see 34 A.B.A.J. 398; May, 1948).

The dispute had previously been taken to the Security Council of the United Nations. Although it is not a Member of the United Nations, Albania had accepted an invitation to be represented in the Security Council. On April 9, 1947, the Security Council recommended "that the United Kingdom and Albanian Governments should immediately refer the dispute to the International Court of Justice in accordance with the provisions of the Statute of the Court".

On May 22, 1947, the Government of the United Kingdom filed an application with the Court, stating its claim as follows:

(1) That the Albanian Government either caused to be laid, or had knowledge of the laying of, mines in its territorial waters in the Strait of Corfu without notifying the existence of these mines as required by Articles 3 and 4 of Hague Convention No. 8 of 1907, by the general principles of



MANLEY O. HUDSON

Sherry

international law and by the ordinary dictates of humanity;

(2) That two destroyers of the Royal Navy were damaged by the mines so laid, resulting in the loss of lives of forty-four personnel of the Royal Navy and serious injury to the destroyers;

(3) That the loss and damage referred to in (2) was due to the failure of the Albanian Government to fulfill its international obligations and to act in accordance with the dictates of humanity;

(4) That the Court shall decide that the Albanian Government is internationally responsible for the said loss and injury and is under an obligation to make reparation or pay compensation to the Government of the United Kingdom therefor; and

(5) That the Court shall determine the reparation or compensation.

A Preliminary Question of Jurisdiction Was Raised

The United Kingdom sought to sustain the Court's jurisdiction on the ground that the decision of the Security Council to recommend that the dispute be referred to the Court was binding on Albania under Article 32 of the Charter, Albania having accepted all of the obligations of a Member of the United Nations with

respect to the case. Reference was made to Article 25 of the Charter by which Members "agree to accept and carry out the decisions of the Security Council in accordance with the present Charter". Thus in the eyes of the United Kingdom the case was one as to which the Court could exercise compulsory jurisdiction.

Notice of the application was promptly given to the Albanian Government. In a letter dated July 2, 1947, but received at The Hague on July 23, 1947, the Albanian Government took the position that the Government of the United Kingdom had not proceeded in conformity with the Security Council's recommendation, and that it would therefore be within its right in insisting that the Government of the United Kingdom was not entitled to bring the dispute before the Court by unilateral application without first concluding a special agreement with the Albanian Government. Yet the Albanian Government stated that it fully accepted the recommendation of the Security Council, and that notwithstanding the irregularity it was prepared to appear before the Court; but it made "the most explicit reservations respecting the manner in which the United Kingdom has brought the case before the Court", and emphasized that its acceptance of the Court's jurisdiction for this case could not constitute a precedent for the future. It then communicated the name of its agent.

Proceedings to Define the Issues and Obtain Views of the Parties

In this state of the case, the President of the Court issued an order on July 31, 1947, fixing the time-limits for the presentation of a memorial by the United Kingdom and a counter-memorial by Albania. Within the latter time-limit, the Albanian agent

submitted a preliminary objection to the application on the ground of inadmissibility, contending that a special agreement between the two parties was necessary, and that the application of the United Kingdom was contrary to the provisions of Article 40 (1) and Article 36 (1) of the Statute of the Court.

On December 10, 1947, the President of the Court fixed a time-limit for the presentation of the observations of the United Kingdom. In these observations the United Kingdom took the position that the application and the Albanian letter of July 2, 1947, constituted a "reference" to the Court. Yet it reserved "the right, if necessary, to invoke the jurisdiction of the Court on grounds set forth in its original application".

Availing itself of its rights under Article 31 (2) of the Statute, the Albanian Government appointed Dr. Igor Daxner, President of a Chamber of the Supreme Court of Czechoslovakia, as judge *ad hoc*. Oral arguments presented on behalf of the parties were heard by the Court of sixteen judges on February 26, 27 and 28, and on March 1, 2 and 5.

A Preliminary Ruling Based on the Albanian Letter

The Court declined to express an opinion on the provisions of the Charter of the United Nations and of the Statute of the Court upon which the Government of the United Kingdom relied to establish the existence of compulsory jurisdiction. It found that the Albanian letter of July 2, 1947, removed all difficulties concerning both the admissibility of the application and the question of the jurisdiction of the Court. The effect of that letter was to waive any possible objection directed against the admissibility of the application founded on the alleged procedural

Concerning the Author: Manley Ottmer Hudson, member of our Association since 1916, was born at St. Peters, Missouri, in 1886, and was graduated from William Jewell College (1906) and from the Harvard Law School (1910). He taught law at the University of Missouri and has been Bemis Professor of International Law at Harvard since 1923. Details of his distinguished career and many services to international law and adjudication, to world peace, and to the World Court,

are well known to our readers. He was a Judge of the Permanent Court of International Justice from 1936 until its reorganization in 1946. He has written many authoritative books and articles in his fields of law, and is recognized as one of the world's foremost authorities on international law and legislation. A member of many learned societies, he has long taken great interest in the work of our Association and has repeatedly rendered to it invaluable services.

irregularity, and the letter was found to constitute a "voluntary and indisputable acceptance of the Court's jurisdiction".

The Albanian agent seemed to contend that an application could be filed under Article 40 (1) of the Statute only if compulsory jurisdiction existed, and that in the absence of such jurisdiction proceedings could be instituted only by special agreement. The Court found that these contentions were not justified. It interpreted Article 32, paragraph 2, of the Rules of the Court, to imply "that the institution of proceedings by application is not exclusively reserved for the domain of compulsory jurisdiction". It quoted and approved the following statement made by the Court in 1928 in the *Case Concerning Minorities in Upper Silesia*:

The acceptance by a State of the Court's jurisdiction in a particular case is not, under the Statute, subordinated to the observance of certain forms, such as, for instance, the previous conclusion of a special agreement.

With regard to the reservation formulated in the Albanian letter of July 2, 1947, the Court interpreted the reservation as "intended only to maintain a principle and to prevent the establishment of a precedent as regards the future". Hence the reservation did not enable the Albanian Government to raise a preliminary objection based on an alleged irregularity of procedure, or to dispute thereafter the Court's jurisdiction on the merits.

Judgment Directing That Proceedings Should Continue on the Merits

The judgment of the Court, drafted in French and English, the French text being authoritative, was adopted by fifteen votes to one. In its *dispositif*, it rejected the Preliminary Objection, decided that proceedings on the merits should continue, and fixed the time-limits for the presentation of a Counter-Memorial, a Reply and Rejoinder. The latest of these time-limits is to expire on September 20, 1948.

In a separate opinion, seven judges of the Court—Basdevant, Alvarez,

Winiarski, Zoricic, De Visscher, Badawi and Krylov—though concurring in the judgment, added the statement of their view that the Court should have passed upon the merits of the contention of the Government of the United Kingdom that the case was one falling within the compulsory jurisdiction of the Court. These judges declared that the rule still holds good that the jurisdiction of the Court "depends on the consent of the States parties to a dispute", and that they were not convinced by the arguments presented by the United Kingdom that the present case was one of compulsory jurisdiction. They found it impossible to accept an interpretation according to which Article 36 of the Charter "without explicitly saying so, has introduced more or less surreptitiously, a new case of compulsory jurisdiction". On this point, the view maintained by the Albanian Government appeared to them well-founded.

The Interesting Dissent of the Albanian Judge *Ad Hoc*

Dr. Igor Daxner, Albanian judge *ad hoc*, gave an able and interesting dissenting opinion. He dealt at length with the United Kingdom contention based on Article 25 of the Charter, and with giving to a recommendation under 36 (3) of the Charter the force of a decision of the Security Council having an obligatory character. He insisted upon the historic use of the term "recommend", and quoted the records of the San Francisco Conference to show that a recommendation made by the Security Council could not impose an obligation on the Governments to which it was addressed. With regard to Article 40 (1) of the Statute, Dr. Daxner expressed the view that the Court could be seized of an application only in cases of compulsory jurisdiction.

With regard to the Albanian letter of July 2, 1947, Dr. Daxner expressed the view that the acceptance of the recommendation of the Security Council by the Albanian Government did not implement the recommendation which the Security Council had made, and that thenceforth the two parties were bound to

submit the dispute to the Court by special agreement. He distinguished sharply between the ability to appear before the Court and the competence of the Court. With regard to the "jurisdiction" of the Court, he called attention to the confusion attending the use of that term in the Resolution of the Council of the League of Nations of May 17, 1922, and in the Resolution of the Security Council of October 15, 1946. These resolutions seemed to him to make the acceptance of the Court's jurisdiction a preliminary condition to a State's being able to appear before the Court.

Why Albania Agreed To Appear Before the Court

He concluded that Albania's acceptance of the Court's jurisdiction in the letter of July 2 was merely a recognition of the jurisdiction for the purpose of enabling Albania to appear before the Court, and that thereafter Albania retained the privilege of contesting the admissibility of the United Kingdom application. Asking himself why, in spite of its right to ignore the application, Albania agreed to appear before the Court, Dr. Daxner made the following interesting observation:

As a small country of scarcely a million inhabitants, Albania could not, by its refusal, adopt a position which might have been easily adopted by a great power, such as England for instance, in a similar case. Moreover, in the eyes of the world, Albania has hitherto been considered (wrongly, of course) as one of the countries of the Balkans, so often described as the "powder-keg" of Europe. Its refusal to appear before the Court would have been contributed to confirm this unfounded reputation as a backward country which refused to recognize the institutions of the civilized world by an act which might have been interpreted as involving contempt of Court. In such circumstances, therefore, Albania chose not to invoke its right, as a great power might easily have done without incurring the criticism of the world, and agreed to appear before the Court.

Dr. Daxner declared that the Albanian Government would have the right to ignore the United Kingdom application. He proceeded to exam-

ine the reservations in the Albanian letter at length, his general conclusion being that the application was irregular *ab initio*, that the Albanian Government had not either *expressis verbis* or tacitly done anything to make the application valid, that for the time being the Court was not competent to consider the case on the merits, and that the preliminary objection should have been upheld.

The Government of the United Kingdom was represented by W. E. Beckett, as agent, and by Sir Hartley Shawcross, Dr. H. Lauterpacht, C. H. M. Waldock, R. O. Wilberforce, J. Mervyn Jones, and M. E. Reed, as counsel. The Government of the People's Republic of Albania was represented by Kahreman Ylli, as Agent, and by Professor Vladimir Vochoc and Professor Ivo Lapenna, as Counsel.

Judgment of the Court a Valuable Addition as to its Jurisdiction

The judgment of the Court in this case is a valuable addition to the jurisprudence concerning the jurisdiction of the Court. It was made necessary by the somewhat strained arguments presented by the applicant in this case, and by the seeming

obscurities in the respondent's letter in reply.

It is to be hoped that the opinions in the case will not cast in doubt the following point: When State A submits to the Court an application against State B which is entitled to appear before the Court but is not a party to any instrument recognizing the compulsory jurisdiction of the Court, State B has several courses open to it:

(1) It may consent to the Court's exercise of jurisdiction;

(2) It may file a preliminary objection and appear to contest the jurisdiction of the Court;

(3) It may do nothing, and thus leave the Court to pronounce that it has no jurisdiction.

If State B is not entitled to appear before the Court, the Court must declare that it has no jurisdiction.

Conditions Under Which Court Is Open to States Not Parties to the Statute

As Albania is not a party to the Statute, a question arose in this case as to the application of the provision in Article 35 (2) of the Statute of the

Court that the conditions under which the Court shall be open to States not parties to the Statute "shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council". Article 36 of the Rules of the Court provides:

When a State which is not a party to the Statute is admitted by the Security Council, in pursuance of Article 35 of the Statute, to appear before the Court, it shall satisfy the Court that it has complied with any conditions that may have been prescribed for its admission; the document which evidences this compliance shall be filed in the Registry at the same time as the notification of the appointment of the agent.

In his order of July 31, 1947, the President of the Court stated that "having regard to the Resolution of the Security Council of April 9, 1947, the said note of the Albanian Government [of July 2, 1947] may be regarded as constituting the document mentioned in Article 36 of the Rules of the Court".

According to an announcement in the press, the United Kingdom and Albania have concluded a special agreement relating to this case.

■ For lawyers are the custodians of one great stabilizing device in our society. Without law there would be anarchy and chaos. Without lawyers, there would be no law in any refined and effective sense. Students at law school are largely engaged in a survey of the fact situations which have arisen in the past in matters involving the adjustment of human relations, and in studying the thought and the modes of thought which have been developed in dealing with those relations. When they leave the law school they are engaged themselves in the ordering of human relations. Some of them will be judges. Others will act in other public capacities, as administrators or legislators. But the great majority of them will serve the public as private practitioners, engaged in the constant day-to-day detail of planning human relations so as to avoid conflicts, and in straightening out the conflicts which do develop. As a nation we are committed to the rule of law. If that rule is to function effectively it must be administered by men who are well and thoroughly trained.

In the present day, such training cannot be provided in a merely technical way. Students must understand not only the decisions of Courts, but also the background of those decisions, the forces that were in operation, the competing needs out of which controversies arose. Students must also be shown not merely what the law has been and is, but how it should develop if it is to serve our society better. For law has never been static. There are many areas where it is in great need of improvement. And the law schools should always be alert to be leaders in the sound development of the law.

—DEAN ERWIN N. GRISWOLD in the first issue of the *Harvard Law School Bulletin* (April).

1948 Annual Meeting:

First Announcement of Program for Seattle

THE ASSEMBLY First Session

Monday, September 6—10:00 A.M.

The President of the Association, presiding
Call to order
Address of Welcome
Response

Harrison Tweed, New York City
Introduction of Distinguished Guests
Annual Address of the President of the Association
Tappan Gregory, Chicago, Illinois
Opportunity to offer resolutions, pursuant to Article IV, Section 2, of the Constitution
Seventh Annual Meeting of the American Bar Association Endowment
Announcement by Secretary of vacancies, if any, in the offices of State Delegate and Assembly Delegate
Nomination and election of Assembly Delegates to fill vacancies
Nomination of five Assembly Delegates for three-year term ending with adjournment of 1951 Annual Meeting

Second Session

Monday, September 6—8:30 P.M.

The President of the Association, presiding
Address by the Honorable James F. Byrnes, former Secretary of State

Third Session

Wednesday, September 8—2:00 P.M.

The President of the Association, presiding
Addresses

Honorable Charles A. Halleck, Member of the House of Representatives from Indiana
Honorable John T. Hackett, K.C., M.P., retiring President of the Canadian Bar Association
Report of the Committee on Resolutions
Amendments to the Constitution and By-Laws

Fourth Session

Thursday, September 9—2:00 P.M.

The President of the Association, presiding

Announcement of election of Assembly Delegates, pursuant to Article IV, Section 3, of the Constitution, as amended

Presentation of Awards of Merit to two State Bar Associations and two local Bar Associations

Presentation of winner of Ross Bequest Award

Statement concerning American Law Institute

Report of action upon resolutions previously adopted by the Assembly, the Chairman of the House of Delegates

Action by the Assembly upon any resolutions previously adopted by the Assembly but disapproved or modified by the House

Unfinished business

New business

Annual Dinner

Thursday, September 9—7:30 P.M.

The President of the Association, presiding
Presentation of American Bar Association Medal
Address by Leonard W. Brockington, C.M.G., K.C., LL. D.
Presentation of Incoming President

HOUSE OF DELEGATES

The House of Delegates will meet promptly at 2:00 P.M. Monday, September 6; 9:30 A.M. Tuesday, September 7; 9:30 A.M. Wednesday, September 8; and 9:30 A.M. Thursday, September 9, for the consideration of reports and recommendations of Sections and Committees, and other business which may come before it.

The Calendar of the sessions of the House of Delegates will be printed in the Final Program for the Annual Meeting, and a final Calendar containing the text of all available resolutions to come to the attention of the House will be distributed at the first session.

Tentative Schedule of Section Meetings

Thursday, September 2
Section Meetings—

Morning: Taxation (Council)

Afternoon: Taxation (Council)

Friday, September 3

Section Meetings—

- Morning: Taxation (Council)
 Afternoon: Taxation (Council)

Saturday, September 4

Section Meetings—

- Morning: Junior Bar Conference (Council)
 Patent, Trade-Mark and Copyright Law (Council)
 Afternoon: Junior Bar Conference (Council)
 Legal Education and Admissions to the Bar (Council)
 Patent, Trade-Mark and Copyright Law (Council)

Sunday, September 5

Section Meetings—

- Afternoon: Corporation, Banking and Mercantile Law (Council)
 International and Comparative Law (Council)
 Judicial Administration (Council)
 Junior Bar Conference (General Session)
 Legal Education and Admissions to the Bar (Council)
 Patent, Trade-Mark and Copyright Law (General Session)
 Public Utility Law (Council)
 Taxation (General Session)
 Evening: Corporation, Banking and Mercantile Law (Reception)
 Judicial Administration (Dinner for the Appellate Judges)
 Junior Bar Conference (Reception)

Monday, September 6

Luncheon Meetings—

- Noon: Bar Activities, Legal Education and Admissions to the Bar and the Committee on Continuing Legal Education, to be followed by an afternoon session.
 International Association for the Protection of Industrial Property
 Real Property, Probate and Trust Law (Officers and Members of the Council)

Section Meetings—

- Afternoon: Administrative Law (General Session)
 Corporation, Banking and Mercantile Law (General Session)
 Criminal Law (General Session)
 Insurance Law (General Session)
 International and Comparative Law (General Session)
 Judicial Administration (General Session)
 Junior Bar Conference (Committee meetings at 2 and 3 P.M.)
 Mineral Law (Council)
 Municipal Law (General Session)
 Patent, Trade-Mark and Copyright Law

(General Session)

- Public Utility Law (General Session)
 Real Property, Probate and Trust Law (General Session, Program of Real Property Division)
 Taxation (General Session)

Tuesday, September 7

Breakfast Meetings—

- Committee on Life Insurance Law and the Committee on Health and Accident Law
 Real Property, Probate and Trust Law (Officers, Council Members and Members of Section Committees)
 Morning: Administrative Law (General Session)
 Bar Activities (General Session)
 Corporation, Banking and Mercantile Law (General Session)
 Insurance Law (Three Round Tables)
 International and Comparative Law (General Session)
 Judicial Administration (General Session)
 Junior Bar Conference (General Session)
 Labor Relations Law (General Session)
 National Conference of Bar Examiners (General Session)
 Mineral Law (General Session)
 Municipal Law (General Session)
 Patent, Trade-Mark and Copyright Law (General Session)
 Public Utility Law (General Session)
 Real Property, Probate and Trust Law (General Session, devoted to Committee Reports)
 Taxation (General Session)

Luncheon Meetings—

- Corporation, Banking and Mercantile Law and Taxation to be followed by an afternoon session
 International and Comparative Law and the Junior Bar Conference to be followed by an afternoon session

Section Meetings—

- Afternoon: Administrative Law (General Session)
 Bar Activities (General Session)
 Criminal Law (General Session)
 Insurance Law (Three Round Tables)
 Judicial Administration (Pre-trial demonstration in the federal court room)
 Junior Bar Conference (Noon, Balloting for Officers and Council Members. 2 P.M., Committee on Elections and 2:30 P.M., Meeting of newly-elected Officers and Council Members)
 Labor Relations Law (General Session)
 Legal Education and Admissions to the Bar (General Session)

Mineral Law (General Session)
Municipal Law (General Session)
Patent, Trade-Mark and Copyright Law
(General Session)
Public Utility Law (General Session)
Real Property, Probate and Trust Law
(General Session, Program of Probate
and Trust Law Division)

Section Dinners—

Insurance Law
Junior Bar Conference
Mineral Law
Patent, Trade-Mark and Copyright Law
Real Property, Probate and Trust Law

Wednesday, September 8

Section Meetings—

Morning: Insurance Law (General Session)
Judicial Administration (General Ses-
sion)
Mineral Law (General Session)
Taxation (Committee on State and Lo-
cal Taxes)

Section Dinners—

Judicial Administration
Public Utility Law

Thursday, September 9

Section Meeting—

Morning: Taxation (Committee on State and Lo-
cal Taxes)

Sherlock Holmes:

Was Conan Doyle's Famed Detective a Lawyer?

by Albert P. Blaustein • Former Editor of Columbia Law School News

■ Many lawyers began their reading of detective stories and "mystery" fiction with Sir A. Conan Doyle's chronicles of the adventures of Sherlock Holmes, since depicted many times on the stage, screen and radio. For the delectation of those who still remember their readings of Holmes or will turn back to these legendary reportings by the faithful "Dr. Watson", our present author has come forward with the thesis, and some evidence, that the Baker Street sleuth was evidently educated or trained in the law, although he never practiced as a barrister or solicitor. At a time when much of the contents of the *Journal* are in a mood of advocacy or foreboding, this reminiscent recourse to literature of our younger years may be welcomed as in light vein.

■ It was not until my sixth perusal of the sacred writings¹ that I finally stumbled upon the truth of the matter. And it was not until I completed a comprehensive examination and analysis of the works of one Watson² that I felt free to make this revelation to the reading public. But now it can be told: Sherlock Holmes³ was a lawyer.⁴

The first clue concerning Holmes' legal background is contained in Watson's first literary endeavor, *A Study in Scarlet*, in which the good

doctor drew up a document setting forth the accomplishments and disabilities of his (or her⁵) companion. The twelfth and last statement of the commentary reads as follows: "Has a good practical knowledge of British law" (1 Wat. 11).

Where did "the master" obtain such learning? It is conceded that an old and experienced detective might very well acquire speaking acquaintance with British rules of law; but at the time the document referred to was prepared, Holmes was

at the threshold of his career. It is submitted that the great detective obtained this knowledge while studying for the Bar. Remember: Holmes speaks of having been at college,⁶ but we are never told what college it was, or what he studied.

And not long afterwards we find this commentary again the subject of conversation between the sleuth and his Boswell. Watson re-emphasized his characterization of "the master"

1. *The Complete Sherlock Holmes* (Garden City Publishing Company). This compilation is, for convenience in checking by readers, referred to herein as "1 Wat."

2. Author of the Sherlock Holmes stories; officially known as John H. Watson, M.D.

3. World-famous consulting detective, formerly residing at 221B Baker Street, London. Present whereabouts unknown. Often referred to as "the master".

4. But not, of course, a practicing solicitor or barrister.

5. There is at present a heated controversy concerning the sex of Watson. Some commentators, such as the spiritualist A. Conan Doyle, assert that the doctor was a man. Contra: Rex Stout, *Watson Was a Woman*.

6. *The Gloria Scott*, 1 Wat. 429; *The Musgrave Ritual*, 1 Wat. 444.

as a lawyer in the *Adventures of Sherlock Holmes: The Five Orange Pips* (1 Wat. 253).

But this document was merely the initial clue. Careful study of Holmes' statements indicates that he talked like a lawyer. In the *Adventures of Sherlock Holmes: The Adventure of the Noble Bachelor*, for example, "the master" says: "But this maid, Alice, as I understand, *deposes* that she went to her room . . ." (1 Wat. 334; italics mine). And in *His Last Bow: The Adventure of the Dying Detective*, Holmes says: ". . . I dare say it was by some device that poor Savage, who stood between this monster and a *reversion*, was done to death" (1 Wat. 1108; italics mine). Who but a lawyer uses casually such terms as "deposes" and "reversion"? This almost proved the truth of Holmes' background by itself; but, because detective story readers make a critical audience, other evidence is sought.

"Our difficulties are not over . . . our police work ends but our legal work begins" (1 Wat. 1042). This is the talk of the lawyer; it is the statement of Sherlock Holmes in *His Last Bow: The Adventure of Wisteria Lodge*.

Consider, too, this comment by the good Watson in the *Adventures of Sherlock Holmes: The Bascombe Valley Mystery*: "James McCarthy was acquitted at the Assizes on the strength of a number of objections which has been drawn out by Holmes and submitted to the defending counsel" (1 Wat. 244). Since when do laymen prepare objections for proceedings in a Court of law? Have we convinced the skeptic?

In the *Memoirs of Sherlock Holmes: Silver Blaze*, the reader gets a chance to see the detective's legal mind at work when, after the doctor presents a possible story to explain a

crime, "the master" responds that "A clever counsel would tear it all to rags" (1 Wat. 389), and proceeds to show how it would be done. And, when Watson, referring to a search, suggests: "Could we not get a warrant and legalize it?" (1 Wat. 1010), Holmes responds: "Hardly on the evidence". See *His Last Bow: The Adventure of the Bruce-Partington Plans*.

Who but a lawyer would have acted the way Holmes did in *The Return of Sherlock Holmes: The Adventure of the Six Napoleons*? The detective deduced that the stolen gem was hidden in the last remaining bust of Napoleon, and was determined to purchase all rights to the statuette. Here let Watson tell what happened: "Holmes took a paper from his pocket and laid a ten-pound note upon the table. 'You will kindly sign that paper, Mr. Sandeford, in the presence of these witnesses. It is simply to say that you transfer every possible right that you ever had in the bust to me. I am a methodical man, you see, and you never know what turn events might take afterwards'" (1 Wat. 693).

It might be added that Holmes, like all lawyers, loved to play the role of judge; and in one tale in *The Return of Sherlock Holmes: The Adventure of the Abbey Grange*, "the master" does his best to appear the jurist. Again let me quote from the sacred writings. Holmes has just held out his hand to the sailor for the second time. He then says (1 Wat. 760):

"I was only testing you, and you ring true every time. Well, it is a great responsibility that I take upon myself . . . we will do this in due form of law. You are the prisoner, Watson you are a British jury and I never met a man who was more eminently fitted to represent one. I am the judge. Now, gentlemen of the jury, you have



ALBERT P. BLAUSTEIN

heard the evidence. Do you find the prisoner guilty or not guilty?"

"Not guilty, my lord."

"*Vox populi, vox Dei*. You are acquitted, Captain Crocker; so long as the law does not find some other victim you are safe from me."

But a portrait of Holmes the lawyer and Holmes the judge requires some comment on Holmes the legal philosopher. The following is in the *Adventures of Sherlock Holmes: The Adventure of the Copper Beeches* (1 Wat. 369):

"The pressure of public opinion can do in the town what the law cannot accomplish. There is no lane so vile that the scream of a tortured child or the thud of a drunkard's blow does not beget sympathy and indignation among the neighbors, and then the whole machinery of justice is ever so close that a word of complaint can set it going, and there is but a step between the crime and the dock. But look at these lonely houses in the country, each in its own fields, filled for the most part with poor ignorant folk who know little of the law. Think of the deeds of hellish cruelty, the hidden wickedness which may go on, year in, year out, in such places, and none the wiser".

One might even go so far as to say that Sherlock Holmes was a good lawyer.

Concerning the Author: Albert P. Blaustein, of Mt. Vernon, New York, was born in 1921 and was graduated in 1941 from the University of Michigan, where he was city editor of the *Michigan Daily*. He spent a year in Chicago as a reporter on newspapers, and then went into the Army. After four years, of which more than a year was in the ETO, he was discharged as a first lieutenant in the Corps of Military Police. In February

of this year he was graduated from the Columbia Law School, where he was the first editor-in-chief of the *Columbia Law School News*. He has written "columns" and articles on law and lawyers as depicted in detective stories, movies, radio, etc., and has contributed to the *Baker Street Journal*, a quarterly for "Sherlock Holmes fans", to whom this article will provide new "fodder" for argument.

THE DEVELOPMENT OF INTERNATIONAL LAW

Louis B. Sohn • Editor-in-Charge

Replies by Governments to the United Nations as to Draft Covenant and Declaration for Human Rights

■ No decisive trend as to the Draft Covenant and Draft Declaration on Human Rights, or the proposed Measures for Implementation of the Covenant, can be inferred from the official observations submitted by several Governments to the United Nations. Only six states of the fifty-eight members transmitted their replies by April 3, the time limit set by the Commission on Human Rights. The United Kingdom, France, the Soviet Union, China, Brazil, Argentina and Norway did not reply. Little that denotes probability as to the ultimate disposition of the matters can be deduced from the six replies of which the text is available. One of six replying—Pakistan—announced that it had no comments to make at this stage. The text of the United States reply is given in full, at the end of the summaries of other responses.

■ The Dominion Government of Canada found it impossible to express views "without having had the benefit of learning the opinion of Parliament". It suggested that the final consideration of the drafts be postponed from 1948 to the 1949 session of the General Assembly.

The Australian Government made a plea for replacing the Declaration with a more concise statement of general principles, which could become an instrument for public appeal and persuasion. It suggested that seventeen articles of the Declaration might be transferred to the Covenant, and that the Declaration should not only be promulgated as a separate instrument but should also be incorporated as a preamble to the Covenant.

The Mexican Government favored limiting the Covenant to a simple provision by which states would undertake to respect human rights in their domestic jurisdictions. It opposed the establishment of a world body for ensuring that the rights of man are respected within each country, and it expressed doubts about the ability of such a body to "judge the interests and welfare of the inhabitants of a particular country with the knowledge which the state

concerned would necessarily possess by virtue of those very factors upon which its autonomy as an independent nation was based". Human rights, said Mexico, should be protected within the framework of the internal legal system of each State "by means of swift proceedings challenging the legality of any laws or acts of authorities which may be inconsistent with such rights", but the judgments in these proceedings should not make general declarations with respect to the law or act in question, but should be restricted to assisting the individual plaintiff and giving him the necessary protection.

The Mexican Government presented also a detailed redraft of ten articles of the Declaration, which it considered as the most effective means of promoting human rights. It stressed the importance of the fact that the Declaration "states precisely the human rights and fundamental freedoms which states Members undertook in signing the Charter of the United Nations to promote and develop", and "solemnly proclaims before the whole world a standard of justice and freedom to serve as guide and encouragement to states in their own practice, and enjoying the approval of international public opinion".

The Netherlands Government expressed the opinion that the Declaration should cover the whole field of human rights, including all of the problems treated in the Covenant. The states which are not prepared to ratify the Covenant might be willing to accept, by their vote in the General Assembly, the contents of the Declaration as general directives. Priority should be given to the Declaration, while the Covenant now under discussion should be considered as a first Convention of a series of instruments to be elaborated later on. While it should be left to each state to decide whether or not the provisions of the Covenant should be included in its Constitution, each party to the Covenant should undertake to bring its national legislation into conformity with the contents of the Covenant.

Only the Netherlands Government has submitted detailed comments on the question of implementation. It endorsed the proposal to empower the Commission on Human Rights to discuss and make recommendations in regard to violations of the Covenant. It favored the creation of a special tribunal to deal with legal disputes, at least until the Statute of the World Court is changed to permit suits by individuals. It proposed the establishment of a "High Commission" of independent experts for the adjustment of non-legal disputes; its decisions would be subject to appeal to an intergovernmental supervising body, a "Permanent Human Rights Council". The Netherlands Government was willing even to agree that a decision of the tribunal or of the Commission should bind the state concerned—and if possible all the parties to the Covenant—to act in conformity with it, not only in this particular case, but also "in similar cases"! The Netherlands reply contained also a detailed comment on most articles of the Declaration and the Covenant, with suggestions of amendment.

The reply by the United States was hardly definitive or inclusive. It con-

tained some significant general comments and some specific suggestions with respect to the Covenant. It reserved the right to submit additional

observations, in particular as to measures for implementation.

The comments of the United States Government were as follows:

Text of Reply by the U. S. Government to the United Nations

OBSERVATIONS, SUGGESTIONS AND PROPOSALS OF THE UNITED STATES RELATING TO THE DRAFT INTERNATIONAL DECLARATION ON HUMAN RIGHTS, AND THE DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS CONTAINED IN ANNEXES A AND B OF THE REPORT OF THE COMMISSION ON HUMAN RIGHTS DATED DECEMBER 17, 1947 (As approved and forwarded to the Secretary General of the United Nations)

■ The Government of the United States desires in the first place to indicate its awareness and appreciation of the intensive and able work which has been done on the Bill of Human Rights by the Commission, its Drafting Committee and by the Secretariat. The work that has thus far been done is of great significance, taking into account the magnitude of the task and the multiplicity of possible approaches to its accomplishment. This Government believes, however, that much needs to be done in the way of refinement of the documents so far produced in order that they may serve the purpose for which they are intended.

A basic difficulty which the Government of the United States finds with both the Draft Declaration and Draft Covenant is that they are too long and complex effectively to accomplish their purpose.

Declaration — General Comments

The Declaration is envisaged as properly fulfilling two functions:

1. To serve as basic standards to guide the United Nations in achieving, within the meaning of the Charter, international cooperation in promoting and encouraging respect for and observance of human rights and fundamental freedoms for all;

2. To serve as a guide and inspiration to individuals and groups throughout the world in their efforts to promote respect for and observance

of human rights.

For the achievement of the first of these purposes, a shorter and more concise declaration will be more effective than a long and detailed declaration. The Declaration is not intended to be a legislative document in any sense. The manner in which the United Nations will undertake the task of promoting and encouraging respect for and observance of human rights and fundamental freedoms remains to be determined, but it will almost necessarily have to adopt as a general rule, a broad rather than a detailed approach. However, its freedom to take up matters of detail would be enhanced, rather than diminished, by a declaration in broad and comprehensive terms.

With respect to the second purpose of the Declaration, namely to serve as a focal point for the development of world public opinion, this objective is largely defeated by a long and complicated instrument. The first prerequisite to such a result is a document that is set forth in as simple and readily understandable terms as possible. A spelling out of details in the Declaration itself cannot increase its usefulness for such purposes.

The United States accordingly is strongly in favor of a short and concise Declaration.

Since it is the proper purpose of the Declaration to set forth basic human rights and fundamental freedoms, as standards for the United Nations, it is inappropriate to state the rights in the Declaration in terms of governmental responsibility. In particular it is improper to state in the Declaration that certain things shall be unlawful. If such references are retained, it will be difficult to know what the purpose and meaning of the Declaration is, especially in

contrast to the Covenant. The same consideration applies to some extent to assertions of governmental responsibility found in some parts of the Draft Declaration. It is true that the guaranty of certain rights, such as the right to fair trial, rests exclusively in the hands of the Government. In the case of other rights, such as the right to work, the right to health and the right to social security, there are widely different theories and practices in different parts of the world as to the manner in which the government can best facilitate the desired end.

The United States believes that the Declaration should proclaim rights, but should not attempt to define the role of government in their ultimate attainment. This role will necessarily vary from country to country. The United States not only feels that this difference is inevitable, but that the flexibility of approach which results from it is valuable and should be preserved.

In concluding its commentary on the Declaration, the United States believes that it cannot better express its view of the nature and purpose of this document than by setting forth the following statement by Abraham Lincoln. Referring to the assertion of human equality in the United States Declaration of Independence, he said:

They [the drafters] did not mean to assert the obvious untruth that all were then actually enjoying that equality, or yet that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit.

They meant to set up a standard maxim for free society which should be familiar to all,—constantly looked to, constantly labored for, and even, though never perfectly attained, constantly approximated, and thereby constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people, of all colors, everywhere.

Covenant — General Comments

The United States is of the opinion that brevity and conciseness are at

least as important in the Covenant as in the Declaration.

In particular, the United States is of the opinion that the effort to define detailed limitations to various rights presents serious problems, both from the international and domestic standpoints. It is believed that the effect of such limitations would be to reduce the effectiveness of the Covenant and render it liable to abuse.

The United States regards the Covenant as an undertaking on the part of the contracting parties to observe certain human rights. It is, of course, understood that some of the rights enumerated must be limited in the interests of the full enjoyment of the rights of all and of the general welfare. A general provision having this effect should be included and made applicable to the entire Covenant. However, the attempt to define in detail all the limitations permissible under each article is unnecessary and probably impossible; it is likely to create serious difficulties in the field of domestic law in a number of countries, including the United States, and might result in the Covenant being a retrogressive rather than a progressive document.

The incorporation of detailed limitations can not alter the basic criterion as to whether a party is complying with the Covenant. This criterion is the reasonableness of the limitations imposed on any rights in question. If a state unreasonably limits a right, its situation is not altered in the least by the fact that it asserts a limitation clause in its defense. The hazard in any limitation is that it may be misused to justify unreasonable restrictions on the right the covenant is intended to guarantee. This hazard is increased when a series of detailed limitations is set up as each of these presents the possibility of such abuse.

It is not believed to be possible to set forth the obligations of the Covenant with such precision as to avoid future debate about the meaning intended. This is for the reason that this Covenant will have to be

interpreted in terms of actual situations, the nature of which cannot be foreseen in advance. In any given case, the right in question will have to be related to the situation involved, and frequently to other rights which bear on the situation, to consideration of general welfare, etc. The draft under study, even while attempting to be specific, reveals the true character of these concepts as being based on relative values (see especially Article 27) and the test of reasonableness. Articles 16 and 18, for example, contain limitations so vaguely worded as to require interpretation in specific cases. Article 9 which attempts to be quite specific, contains such words as "reasonable" in paragraph 2(a) and "lawful" in paragraphs 2(b) and 2(c) which require further interpretation. Furthermore, the thousands of recorded court decisions dealing with the interpretation of statutes reveal the impossibility of drafting language capable of covering all contingencies.

An essential difficulty with the expression of specific limitations is that, by common rules of construction, such expression implies the exclusion of others. It would thus be open to argument that any other limitations imposed by law are contrary to the treaty. To give a hypothetical example, it might be necessary, for the protection of the public welfare, to enact new legislation restricting obnoxious medical advertising transmitted by television. Action of this sort would be perfectly proper, but it would not be appropriate at this time to cover the specific point in a broad general instrument affecting fundamental rights only, in many countries, a substantial proportion of which are not concerned today with television. Other technological developments, whose nature cannot be forecast in any way, are bound to arise. To require formal, solemn amendments of the Covenant to cover each of these developments would be clearly impractical. Even existing contingencies can not all be mapped out with respect to all member nations

between the present time and September, 1948, when the General Assembly next convenes. The only type of document in which general agreement can possibly be secured is one of a general nature.

Detailed specific provisions purporting to set forth all possible limitations would be particularly unfortunate in countries like the United States where the basic constitutional document describes treaties, together with the Constitution and laws, as the supreme law of the land. Treaty provisions which, while not intended to change the existing law, are capable of creating confusion and raising multifarious controversies are obviously to be avoided. For this reason alone there might be considerable doubt as to the ability of the United States to accept a Covenant containing such specific limitations.

The foregoing argument presents one detailed reason why, in attempting to draft a treaty on the extremely broad and complex subject of human rights, the best and perhaps the only practicable approach is to have a clear and simple document. It is quite possible that a Covenant which attempts to go into too great detail, even if it could be ratified, would be so complex and confused as to be unworkable in practice.

Covenant—Specific Suggestions by the U. S. Government

PART I OF COVENANT

Articles 1 and 2. It is suggested that these Articles be replaced by a simple statement to the effect that the contracting parties agree to observe and protect, through appropriate laws and procedures, the human rights and fundamental freedoms set forth in Part II of the Covenant.

The detailed statement in Article 2 appears to be unnecessary. The object should be the establishment of a duty to guarantee the requisite standard of protection, the method of accomplishing this being the concern of the state.

Article 4. The deletion of this Article is suggested for the reason that it carries an unwarranted implication that the rights set forth in the Covenant are absolute. While this is true of some rights (such as freedom from slavery, torture and mutilation) others

must be regarded as relative. This is indicated in Article 27 of the draft. The relationship of these rights to each other and to the general welfare can be altered not only by war or other national emergency, but by other factors. For example, the concept of freedom of expression has been limited to recognize the right of the public to be protected against fraudulent advertising. The effect of war or national emergency does not, therefore, justify a state in "derogating" from its obligations. The obligations still remain fully in force and the question remains whether limitations imposed are reasonable under the circumstances.

The United States has in mind a limitation provision, applicable to the entire Covenant, somewhat along the following lines:

The High Contracting Parties agree that a State party to this Covenant may take action reasonably necessary for the preservation of peace, order, or security, or the promotion of the general welfare. Such action by any State party to this Covenant must be imposed by or pursuant to law.

Here or elsewhere in the Covenant it should be made clear that no one shall be denied equal protection of the

law with respect to any of the rights and freedom set forth in the substantive articles of the Covenant.

Article 27 of the Commission draft would be merged in such an article.

PART II OF COVENANT

The United States at this time suggests that the following provisions be deleted:

Article 14. Paragraph 1 of the Article provides protection against *ex post facto* laws. The United States feels that this right should not be impaired. Paragraph 2 should therefore be deleted.

Article 20. Last part of last sentence—arbitrary discrimination and incitement to discrimination. The State cannot be expected to prevent all types of arbitrary discrimination as between private individuals. The phrase concerning "incitement" appears to be subject to the same commentary as is made in the following paragraph in connection with Article 21.

Article 21. The present laws of the United States prevent incitement to violence for any reason when there is a clear and present danger that violence will actually result. Long experience with the problem of free speech has led to the conclusion that any greater limitation would be liable to

misuse for the purpose of suppressing free speech. It is felt that the utmost freedom of speech is a better safeguard against hostility and violence than general laws giving increased powers to suppress freedom of speech.

Since it is desirable that the Covenant be as short and concise as possible, the United States believes that the enumeration of rights should be limited to those which are of basic importance and as to which serious violations might well justify international representations. The United States will at the appropriate time suggest that certain provisions, in addition to those listed above, be deleted either because they are not of basic importance or because they are covered by other more basic rights.

In transmitting this communication, the United States Government wishes to point out that it is also considering other observations with respect to the Declaration and the Covenant which it reserves the right to submit to the attention of the United Nations at a later date. It expects also to submit observations with respect to implementation, which is a subject not specifically covered in this paper.

William O. Wilson of the Board of Governors Dies in His 79th Year

■ Our Association lost one of its devoted and beloved members by the death, on April 14, of William Otis Wilson, of Cheyenne, Wyoming, member of the Board of Governors



WILLIAM O. WILSON

from the Tenth Circuit for a term which will expire with the adjournment of the Seattle meeting. "General" Wilson was a leader of the Bar of Wyoming, and had filled capably many posts of public service. He became a member of our Association in 1918, was Vice President for Wyoming in 1921, and was elected to the old General Council in 1935. He continued as State Delegate and member of the House of Delegates from 1936 and was elected to the Board of Governors in 1945.

Born in Pardee, Kansas, in 1870, he attended high school at Bushnell, Illinois, the Chicago Athenaeum, the University of Chicago (Ph.B., 1897), and the Chicago College of Law (LL.B., 1899). He was admitted to the Illinois Bar, and practiced law in Chicago; but in 1907 he removed to Casper, Wyoming, and was there

after one of the most prominent and influential men of that State. He served as city attorney of Casper (1909-16), prosecuting attorney of Natrona County (1910-14), Attorney General of Wyoming (1927-31), member of the State Board of Law Examiners (1920-28, President 1926-27), President of the Association of Attorneys General of the United States (1930-31), and President of the Wyoming State Bar. He was active in the Boy Scouts movement and in countless civic and patriotic activities in Cheyenne and his State, to all of which he devoted much time and diligent effort. In politics he was a Republican.

In our Association "General Billy" served on many committees, as well as in the House of Delegates, and enjoyed the close friendship of many lawyers from all parts of the country.

THE PRESIDENT'S PAGE



TAPPAN GREGORY

■ The following schedule completes the list of meetings partially reported in the April issue of the JOURNAL (page 308).

March 30, 1948, Milwaukee, Wisconsin. Lunch of Legal Aid Society of Milwaukee.

April 9, 1948, Chicago, Illinois. Annual dinner of Izaak Walton League of America.

April 16, 1948, Lake Charles, Louisiana. In the forenoon, speech to the Louisiana State Bar Association in annual meeting.

April 22, 1948, New York City. After supper, speech to the Association of the Bar of the City of New York.

April 29, 1948, Los Angeles, California. Lunch of the Los Angeles Bar Association.

April 30, 1948, Los Angeles, California. Lunch of judges and lawyers given by Loyd Wright.

May 8, 1948, Madison, Wisconsin. Dinner of University of Wisconsin Law School.

May 16, 17 and 18, 1948, Washington, D. C. Meetings of Administration Committee and Board of

Governors.

May 21, 1948, Wichita, Kansas. Annual dinner of the Bar Association of the State of Kansas. Also spoke at afternoon session, May 22.

May 25, 1948, Rockford, Illinois. Luncheon, Sixth District Federation of Local Bar Associations. Dinner, Winnebago County Bar Association.

May 28, 1948, Oxford, Mississippi. Annual dinner Mississippi State Bar in connection with the celebration of the First Centennial of the University of Mississippi.

June 4, 1948, Springfield, Illinois. Speech at morning session of annual meeting of the Illinois State Bar Association.

June 11, 1948, Hot Springs, Arkansas. Speech at afternoon session of annual meeting of the Bar Association of Arkansas.

June 18, 1948, Chattanooga, Tennessee. Lunch at annual meeting of the Bar Association of Tennessee.

June 24, 1948, Duluth, Minnesota. Annual dinner of the Minnesota State Bar Association.

July 3, 1948, Houston, Texas. Annual dinner of the State Bar of Texas.

August 5, 1948, Grand Forks, North Dakota. Annual dinner of the State Bar Association of North Dakota.

August 13, 1948, White Sulphur Springs, West Virginia. Annual dinner of the Virginia State Bar Association.

August 27, 1948, Helena, Montana. Annual dinner of the Montana Bar Association.

September 6, 1948, Seattle, Washington. Annual address at Annual Meeting of the American Bar Association.

War-Devastated Countries' Aid Committee Work Progressing

Jacob M. Lashly, former President of our Association and Chairman of the Committee on Aid to Lawyers in War-Devastated Countries, has reported that the work of his group is progressing well. He says:

The Committee has sent about 500 gift packages with 100 more ready to go to judges and lawyers in Italy, France, England and the American Zone in Germany. Letters being received by participating lawyers throughout the country contain the most profound appreciation of this evidence of our interest in them. I feel that the project is bringing worthwhile returns in improved relations among these leaders of thought and policy in those countries. The progress made indicates probable success in securing a working law library for Paris and Rome sometime during June.

MANUSCRIPTS FOR THE JOURNAL

■ The Journal is glad to receive from Association members any manuscript, material, or suggestions of items, for consideration for publication. Preponderantly, our columns are filled with articles planned and solicited by members of the Board of Editors or Advisory Board or written by them; but each issue contains articles selected from those submitted to us by others. With our limited space, we can publish only a few of those submitted; but every article we receive is considered carefully by members of the Board of Editors unless for some reason it is plainly unsuited for our publication. Articles in excess of 3000 words including footnotes cannot ordinarily be considered; exceptions are sometimes made as to solicited contributions. "Letters to the Editors" of not more than 250 or 300 words on topics of interest to the professions are especially welcomed. The facts stated and views expressed in any article identified with an individual author are upon his responsibility.

As the work of the Board of Editors is carried on by men who are widely separated in distance and busy in their own professional pursuits, time often elapses before a decision can be made as to whether a proffered article is acceptable and space can be made available for it. We cannot assure that submitted manuscripts not accepted will be returned, although that may usually be done.

AMERICAN BAR ASSOCIATION

Journal

WILLIAM L. RANSOM, *Editor-in-Chief*.....New York, N. Y.
 LOUISE CHILD, *Assistant to Editor-in-Chief*.....Chicago, Ill.

BOARD OF EDITORS

E. J. DIMOCK.....Albany, N. Y.
 REGINALD HEBER SMITH.....Boston, Mass.
 WALTER P. ARMSTRONG.....Memphis, Tenn.
 EUGENE C. GERHART.....Binghamton, N. Y.
 ROBERT N. WILKIN.....Cleveland, Ohio
 JAMES E. BRENNER.....School of Law, Stanford, Calif.
 RICHARD BENTLEY.....Chicago, Ill.
 TAPPAN GREGORY, *President of Association*.....Chicago, Ill.
 HOWARD L. BARKDULL, *Chairman House of Delegates*.....
Cleveland, Ohio

General Subscription price for non-members, \$5 a year.

Students in Law Schools, \$1.50 a year.

Price for a single copy, 75 cents; to members, 50 cents.

EDITORIAL OFFICE

1140 North Dearborn Street.....Chicago 10, Ill.

■ **Future of the Draft Covenant**

The Lord Chancellor of Great Britain, Viscount Jowitt, who is warmly remembered from our 1947 Annual Meeting in Cleveland, announced in the House of Lords on May 7 as a member of the Labor Party Cabinet, that his Government does not favor the submission of a Draft Covenant or Draft Declaration on Human Rights to the 1948 meeting of the General Assembly of the United Nations in Paris. The Government of Canada has advised the Commission on Human Rights that it can state no views or suggestions concerning the Drafts "without having had the benefit of learning the opinion of Parliament". It suggested that consideration of the Drafts be postponed to the 1949 regular meeting of the General Assembly.

Both of the statements of the Canadian Government, as the stand of the British Labor Cabinet, may well be viewed favorably by the Government of the United States. Summaries of such views and comments as were submitted to the Commission on Human Rights are given in our department devoted to international law, along with the full text of the American reply, which was made without consulting the Congress.

Meanwhile, the United Nations Commission is going ahead at Lake Success with efforts to revise and improve the Drafts. Increasing difficulties appear to be encountered. Proposals to make the Covenant more specific and definitive give rise to demands for further qualifying exceptions to recognize and fortify powers of governments to withhold or limit the rights. The American concept that a Bill of Rights should consist of limitations and prohibitions against governmental ac-

tion to deny or impair basic and inalienable rights of individual human persons, and should not consist of or contain pledges of domestic action by governments to promote collective economic gains by classes or groups, makes slow, uphill headway, if any at all. Left-Wing and Labor governments make impassioned pleas for the inclusion of sweepingly socializing measures. The rights of individual persons to be protected from governmental action against their property seems to win no favor at all. Linking of individual duties with the rights confirmed is not an ascendant objective. Hope has not died that some of these moods and obstacles may be overcome, wholly or in part, in final decisions.

Meanwhile, the Draft Covenant and Draft Declaration are being spiritedly debated in some Bar Associations and in other forums of public opinion. The issues appear often to be acutely controversial and deeply divisive. The fate of the Drafts appears to be tied in with many things, including the considerations discussed in the leading article in our May issue ("A Covenant of Free Nations: Shall They Agree on Basic Rights and Freedoms?"). Lawyers who believe themselves sincerely concerned for human rights and the American constitutional system differ vigorously and ably as to the idea of a Covenant, its contents and phrasing, and its proposed implementation. A consensus has hardly emerged, among lawyers or in public opinion. There are manifestations of purpose that the organized Bar shall not take a wholly negative attitude on so great an issue.

It may be too much to expect that in this year of political exigency, in the United States and elsewhere, the Drafts can be formally laid aside as a project for the September meeting of the General Assembly, while the great debate proceeds. The pressures and protests against deferment are formidable as well as divisive. The expressed attitude of the United Kingdom and Canada, and the failure of more than fifty Member nations to make any response at all in time, seems to point to a probability that no documents will be promulgated in 1948. If that be so, many more Bar Associations, and many more of the competent legal draftsmen among American judges, lawyers, and law teachers, should devote themselves to the tasks involved in improving and perfecting the Drafts to an acceptable form.

■ **Power To Select and Send an "Outside" Judge**

Several judges of United States Courts, and practicing lawyers as well, have protested to the Senate Committee on the Judiciary that H.R. 3214, the revision of the Judicial Code which has passed the House and is now before the Senate, should be amended in another respect as well as that already pointed out in these columns ("Laymen as Practitioners in a Federal Court?"; 34 A.B.A.J. 302, April, 1948; "Power To Admit to Practice Is Judicial", 34 A.B.A.J. 389, May, 1948).

H.R. 3214 as it now stands provides (Sec. 292(b))

that the Chief Judge of any Circuit (now known as the Senior Circuit Judge) may send an outside Judge into a District Court whenever "the public interest" requires. This changes the existing law (28 USCA Sec. 17 (a)), which provides that an outside judge may be sent into a district only in three specified contingencies: (1) Absence of the resident judge from the district; (2) disability of the resident judge; or (3) congestion of business in the district.

Sufficient reason for the change has not been established. The revisionists suggest that the change is in the interests of "simplicity". More than words is involved. Under similar language in another statute, a Circuit Judge was able to force his way into a District Court in his Circuit, over the unanimous protest of the District Judges (*Johnson v. Manhattan Railway Company*, 289 U. S. 479), and his discretion as to what the "public interest" called for was held to be unreviewable. Broadening of the empowerment for special selection of a particular outside judge for a particular district should not be undertaken for less than the strongest reasons. Judges and lawyers who have views as to the proposed change should write them at once to Chairman Wiley or Senator Donnell.

Meanwhile, influential support grows for the amendment of H.R. 3214 in the respect urged by our Association. At a recent hearing before a subcommittee headed by Senator Forrest M. Donnell, member of our Association since 1911, of the Senate Committee, Chief Judge Harold M. Stephens, of the United States Court of Appeals for the District of Columbia, United States Circuit Judge Albert B. Maris, of Pennsylvania, and Presiding Judge Bolon B. Turner, of the United States Tax Court which is directly involved, added their support to our Association's efforts to obtain the amendment to excise the requirement that the Tax Court admit non-lawyers as practitioners. Representatives of the Louisiana and Minnesota State Bar Associations, and of the Chicago Bar Association, the New York County Lawyers' Association, and our Association, made arguments in behalf of the amendment.

A compromise which will recognize the vital principle stated in our May editorial ("Power To Admit to Practice Is Judicial", 34 A.B.A.J. 389) and leave the matter in the hands of the Tax Court itself as to present lay practitioners (but no new ones) seems at the present writing a likely outcome.

■ After Three Years

In June of 1945 the Charter of the United Nations was brought to the stage of signing in San Francisco and submission to the Member nations for ratification. An anniversary invites retrospect, appraisal, and looking ahead. The outstanding fact is that the organization was formed, still survives, is earnestly at work, and was not beaten down or destroyed by defects within its own structure and by half-heartedness and worse on the part of some of its members.

When the evangelical over-optimism generated at

the Conference had ebbed, the menacing revelation came that whereas the new organization had been formed to *maintain* peace and international security, no peace or security had been restored in the war-ravaged world. Aggression, force, absolutism, and conquest still stalked their prey in Europe and Asia. The new organization lacked means of beating back, or even of confining, the new bids for totalitarian power. Means had to be found at all hazards; there were many

ADVISORY BOARD of the Journal

Clarence M. Botts	Albuquerque, New Mexico
Charles H. Burton	Washington, D. C.
Frederic R. Coudert	New York, New York
Charles P. Curtis, Jr.	Boston, Massachusetts
Joseph J. Daniels	Indianapolis, Indiana
Deane C. Davis	Montpelier, Vermont
Wm. Tucker Dean, Jr.	New York, New York
Sam T. Dell, Jr.	Gainesville, Florida
A. W. Dobyns	Little Rock, Arkansas
Forrest C. Donnell	St. Louis, Missouri
Charles E. Dunbar, Jr.	New Orleans, Louisiana
Charles R. Fellows	Tulsa, Oklahoma
Henry S. Fraser	Syracuse, New York
Thomas B. Gay	Richmond, Virginia
Farnham P. Griffiths	San Francisco, California
Erwin N. Griswold	Cambridge, Massachusetts
Albert J. Harno	Urbana, Illinois
Joseph W. Henderson	Philadelphia, Pennsylvania
Frank E. Holman	Seattle, Washington
Francis H. Inge	Mobile, Alabama
William J. Jameson	Billings, Montana
William T. Joyner	Raleigh, North Carolina
Bolitha J. Laws	Washington, D. C.
Lanneau D. Lide	Marion, South Carolina
Edwin Luecke	Wichita Falls, Texas
Harold R. McKinnon	San Francisco, California
George M. Morris	Washington, D. C.
Ben W. Palmer	Minneapolis, Minnesota
Orie L. Phillips	Denver, Colorado
Arthur G. Powell	Atlanta, Georgia
Carl B. Rix	Milwaukee, Wisconsin
Clement F. Robinson	Portland, Maine
Pearce C. Rodey	Albuquerque, New Mexico
George Rossman	Salem, Oregon
Paul Sayre	Iowa City, Iowa
James C. Sheppard	Los Angeles, California
W. Eugene Stanley	Wichita, Kansas
Robert S. Stevens	Ithaca, New York
William E. Stevenson	Oberlin, Ohio
Phil Stone	Oxford, Mississippi
Wesley A. Sturges	New Haven, Connecticut
Lane Summers	Seattle, Washington
John E. Tarrant	Louisville, Kentucky
Robert B. Tunstall	Norfolk, Virginia
Waldemar Q. Van Cott	Salt Lake City, Utah
Earl Warren	Sacramento, California
Roy E. Willy	Sioux Falls, South Dakota
Charles H. Woods	Tucson, Arizona
Lloyd Wright	Los Angeles, California
Louis E. Wyman	Manchester, N. H.

Members of the Advisory Board are consulted from time to time by the Board of Editors as to policies and problems of the Journal. They obtain, or suggest, and will at times prepare, desirable material for publication, particularly from their respective regions. Except for the monthly editorial contributed and signed by a member of the Advisory Board, none of its members is responsible, individually or collectively, for the contents of the Journal.

temptations to discard or disrupt the United Nations in so doing.

Probably the most hopeful development as the third anniversary nears is that this need may have been worked out within and through the structure of the United Nations. The Inter-American Treaty of Reciprocal Assistance and our own close cooperation with Canada are bulwarks of security through common defense in this hemisphere. Many difficult problems of inter-relationship and hemispheric policy remain for adjustment; the shifts of attitude by our government have at times been hard to follow; but the will for peace, cooperation and amicable settlement or arbitration are manifest. The lawyers of each country, in a great confraternity, have been principal factors for understanding and common defence.

The free nations of Europe have lately joined hands for similar purposes of mutual protection; in the interests of the security of the nations of this hemisphere if for no other reasons, the Marshall Plan has brought to European bastions of freedom American aid and has encouraged them to guard and defend their freedoms; the beginnings of federation and federalism may be emerging. Winston Churchill, the world's foremost statesman, the symbol of free civilization, said at The Hague on May 7 that "we seek nothing less than all of Europe" in the ultimate plan for unity, and that we "welcome any country where the people own the government and not the government the people". Free nations of Asia, Africa and the Pacific may act with others in the common cause. A declaration of policy by our own government, with members of both parties in the Congress decisively in accord, as to American association and assistance for those who propose to maintain and preserve popular government and basic freedoms is at hand.

All this is taking place within the structure of the Charter and without disrupting the United Nations. Will this rallying of nations to act and fight together, if need be, to prevent further aggressions produce a peace, a truce, or a renewal of war? The means may have been fashioned for restoring peace. If so, the United Nations could then more hopefully move ahead toward accomplishing some of the tasks for which it was designed.

■ 100 Years of Freedom

In the spring of 1848, when our war with Mexico had just ended and the "gold rush" to California had begun, ten men from six New York newspapers met and formed the Associated Press, to avail themselves cooperatively of what the new device known as the telegraph could mean in obtaining reliably the news and bringing it into the newspaper offices. In one small room, up many stairs, at Broadway and Liberty Street far down-town in New York, one man did the job at the start. This was the founding of a great institution of freedom—an independent news-gathering agency which has never known fear or favor, has worked with government when

public security was involved but has never been coddled by government or subservient to official power—truly one of the chief reasons why public opinion in America has, on the whole through the years, been informed, untrammelled and often militant.

A month ago the Associated Press in annual meeting celebrated the fact that it is a century old. Communication by wire, radio, and aircraft, have all but abolished distances and delays and have enabled a world-wide coverage from countless listening-posts. Mutual ownership by the member newspapers has been maintained, and this has assured an honest-minded, objective service, because it has meant the responsibility of many men of many minds, with a common background and ingrained tradition of getting and publishing the truth. Powers of government and of judicial decree have been levelled against it, but they have not broken its independence and integrity. Valiant men among its members have fought many battles, and are still fighting them, for true freedom of the press and the right of all people in all lands to have trustworthy information on which to form and base their own opinions.

Americans should honor and cherish their institutions of freedom, not many of which are creatures of government or parts of government. High among the bulwarks of American liberty we rate our free and independent press and the great news-gathering agencies, among which the Associated Press is the honored senior.

■ "No Law But Our Own Prepossessions"?

In our May issue we commented on what appears to be a tendency in the Supreme Court to invalidate under the First and Fourteenth Amendments State laws and State law enforcement measures which have worked well in the States for many years and have long been upheld, as valid under the same constitutional provisions, by the highest Courts of law in the States ("Striking Down State Laws", 34 A.B.A.J. 390). We here comment on another propensity, instanced by the decision in *Illinois ex rel McCollum v. Board of Education* ("the Champaign County School Case"), decided on March 8 and reported in our Review of Recent Supreme Court Decisions (34 A.B.A.J. 318; April, 1948), to invalidate and proscribe local and State "practices embedded in our society by many years of experience", not expressly contained in State statutes although carried on under their authority and expressly upheld by the State Courts as valid under the constitutional provisions now held to outlaw them.

In the *McCullom* case, Mr. Justice Jackson, who concurred with the eight-to-one majority in reversing the Supreme Court of Illinois (396 Ill. 14), wrote that It is idle to pretend that this task is one for which we can find in the Constitution one word to help us as judges to decide where the secular ends and the sectarian begins in education. Nor can we find guidance in any other legal source. It is a matter on which we can find no law but our own prepossessions.

He avowed that "We should place some bounds on the

demands for interference with local schools that we are empowered or willing to entertain". And Mr. Justice Reed, who alone dissented, warned that

This Court cannot be too cautious in upsetting practices embedded in our society by many years of experience. A State is entitled to have great leeway in its legislation when dealing with the important social problems of its population. A definite violation of legislative limits must be established. . . . Devotion to the great principle of religious liberty should not lead us into a rigid interpretation of the constitutional guarantee that conflicts with accepted habits of our people.

The *McCullum* case may be one of those fateful decisions which is ignored at the time and regretted in the future. It deserves thorough consideration now. The people should have the assistance of lawyers in coming to an understanding of its effect and implications. The latent consequences of the ruling could hardly be over-emphasized. It is a pronouncement by our Supreme Court on a fundamental principle, not only of national policy but of our civilization and way of life. The *JOURNAL* wishes to assist in analyzing the case and, to the extent of available space, invites a discussion of its import.

Statutes of the State of Illinois were involved to the extent that its compulsory education law required attendance at schools within specified ages and gave to district boards of education supervisory powers over the use of public school buildings. What was done and permitted by the Champaign board, in agreement with accredited representatives of the different religious faiths, was held to violate the First Amendment, extended by the Fourteenth Amendment to apply to State legislation. What the Courts were asked by the petitioner-appellant to do was not an invalidating of any State law but the granting of a writ of mandamus telling the local school board what it should and should not do.

Interested members of the Jewish, Roman Catholic, and Protestant faiths in the school district had formed a voluntary association called the "Champaign Council on Religious Education". They obtained permission from the Board of Education to offer classes in religious instruction to public school pupils. Classes were made up of pupils whose parents had signed printed cards asking that their children be permitted to attend. Such classes met once a week in the regular school rooms of the school building. The Council employed the religious teachers at no expense to the school authorities, but the instructors were subject to the approval and supervision of the superintendent of schools. The classes were taught in separate groups by Protestant teachers, Catholic priests, and a Jewish rabbi. Students who did not choose to take the religious instruction went to some other room in the building to pursue their secular studies. Students present at any of the religious classes were released for that time from secular study. Accordingly, reports of their presence or absence at religious classes were made to secular teachers. No coercion, discrimination or favoritism for any one religious faith or

sect was shown. The challenge was of any religious teaching at all on school property and during school—in the religious faith chosen by parents or pupils with freedom for any to stay away.

The plaintiff, an avowed atheist, asked that the Court order the Board of Education to "adopt and enforce rules and regulations prohibiting all instruction in and teaching of all religious education in all public schools in Champaign District No. 71 and in all public school houses and buildings in said District". She asked the Court to ban "every form of teaching which suggests or recognizes that there is a God". She specified the proscribing of the teaching or reading of any parts of the Scriptures, including the Twenty-third Psalm. Two hundred years ago, a woman like Mrs. McCollum would have been persecuted as an infidel and heretic. Today she sought and obtained the aid of a judicial decree to suppress the teaching which was the very genesis of the freedom which she exercises for herself by trying to take it from others.

The best available figures of the United States Office of Education and the National Education Association show that at least two million children were attending some kind of religious classes in 2200 cities, towns and communities a year ago, with the number at least 3000 this year and the number of children correspondingly increased. Nearly all children in public schools are present during reading of Scriptures of non-sectarian prayers. According to a survey reported by the United Press, Bible-reading in public schools is required by law in Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Maine, Massachusetts, New Jersey, Pennsylvania, Tennessee and the District of Columbia. Another twenty-four States permit reading of the Bible and repeating the Lord's prayer without comment.

The extent of the Court's disruption of local practices and habits of the people in many States is shown by the NEA survey as reported by the United Press. "Definitely unconstitutional" under the decision is any plan under which the school system releases pupils from regular school classes and provides classrooms and other services for the religious classes. Some school districts in at least eleven States conduct such programs: Alabama, Illinois, Louisiana, Michigan, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont and Virginia, and Hawaii.

Also "unconstitutional" under the ruling is any plan where religious education is conducted off school premises but during school hours and with the active cooperation of the school administration, pupils being released from the regular school, and teachers and church authorities cooperating in keeping attendance records. Some schools in at least these thirty-four States have that type of a plan: Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Oregon,

Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wisconsin, and Alaska, and Hawaii. In New York State, this type of plan was upheld as constitutional by the Court of Appeals in a suit by an atheist (*People ex rel. Lewis v. Graves*, 245 N. Y. 185), and later embodied in the State's education law (Section 3210 (1)).

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". The Fourteenth Amendment has been construed by the Court to extend to lawmaking by a State the prohibitions contained in the First Amendment. Looking at the matter in the light of our country's history as Mr. Justice Reed urged, it is difficult to see how the Constitution was violated by what the local community and school board in Champaign did. Did it constitute an "establishment" of religion? Was not "the free exercise" of religion *denied* by what the Court did, rather than by the State law? Mr. Justice Reed said that the Amendments "do not bar every friendly gesture between church and State" and are not "an absolute prohibition against every conceivable situation where the two may work together". It has never been so in our history.

James Madison wrote that "he apprehended the meaning of the words to be, that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience". Thomas Jefferson, oft-quoted foe of giving governmental support to any one religious sect or faith to the exclusion of others, did not oppose the use of public funds in support of religious education along with other education. On the contrary, he recommended for his beloved University of Virginia a theological school for the training of clergymen, a large room for religious worship, an elaborate arrangement for students of the religious institutions which he proposed that the various denominations should set up in connection with the University—all at public expense! As President of the United States, Jefferson used public funds and government properties in aid of religion and religious education in various ways, as has every President to this day. Recognition of an interest in and support for religion of the recipient's choosing has not been regarded as an "establishment", so long as no one faith is singled out, favored, or established to the exclusion of others.

Sessions of the Senate and House of Representatives, under their historic rules, are opened always with a prayer, by Chaplains paid from public funds. Chapels are maintained on the government reservation at West Point and Annapolis; "no cadet will be exempted from attendance". Millions of dollars were spent in erecting and maintaining chapels at army camps and bases during World War II; they were used interchangeably by clergymen of the different faiths. Chaplains went everywhere with the troops and on ships of war, and conducted services. Money of taxpayers and properties

of government were used freely to see to it that our young men who went into the face of danger and death did not lack the ministrations of those who believed in God and the verities of religion. Must State and local governments do less for those who are being educated for citizenship and life?

Under the 1944 legislation, a discharged veteran may be educated at public expense to be a clergyman, in a denominational school of his choice. A month after the decision in the *McCullum* case, the Congress passed and the President signed an appropriation of \$500,000 to erect a chapel for religions at the United States Merchant Marine Academy at King's Point, New York. On May 28 the United States Post Office placed on sale a postage stamp bearing the legend: "These Immortal Chaplains . . . Interfaith in Action". It bears portraits of four young ministers of religion—a Methodist, a Roman Catholic priest, a Jewish rabbi, and a Baptist—and also a painting of a torpedoed troop-ship which carried them to their graves off Greenland on February 3, 1943—the S.S. *Dorchester* of our Navy. They were on government property at taxpayers' expense, to hold religious services and give instruction and ministration in religion. And when they made their way to the deck of the stricken ship, they gave their life-jackets to four young men who had lost theirs in the confusion. Having given away their own chance to live, the four chaplains stood close together, holding hands, as the ship went under—an immortal demonstration of the unity of religious faiths and what religion does for people—now appropriately commemorated by our government. Was all this "constitutional"? Maybe there was something in the *Dorchester* incident which the majority in the Supreme Court missed—something to which the highest Courts of our States and countless local communities have held fast.

The Constitution of the Soviet Union provides (Article 124):

In order to insure to citizens freedom of conscience, the church in the USSR is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognized for all citizens.

Fortunately, the framers of our Constitution did not go that far, and the institutions and practices of our people have not gone that far. Nothing in our Constitution commands that the First Amendment should now be interpreted as though it read like the above-quoted provision. Nothing in our Constitution commands that "freedom of religion" shall be freedom from religion.

Of course, the decision has a far deeper significance, in the philosophy of law and government and the role of the Court, than the interdiction of the arrangement worked out by the religious faiths with the school board in Champaign, Illinois. As Mr. Justice Jackson and Mr. Justice Reed solemnly warned, new and far more vexatious aspects will arise, in litigation which will seek to carry the present ruling to further extremes.

The traditionally religious sanctions of our law, life and government, are challenged by a philosophy and a judicial propensity which deserves the careful thought and concern of lawyers and people. We shall discuss it soon in other aspects.

Editorial

From a Member of Our
ADVISORY BOARD

■ The Judge and the Jury

Mine is a timeworn theme, yet it is of perennial interest to most members of the bench and Bar throughout the wide expanse of our nation, and of course it affects the public welfare in many ways. The judge and the jury are both important factors in our judicial system, and the consideration of their coordinate action, with a view to possible improvement, is worthwhile.

It is often said that the judge is concerned with the law and the jury with the facts—a statement not altogether accurate, because having the inherent vice of generalization. The judge is indeed primarily concerned with the law; but, as an eminent jurist once said, "The facts breed the law". On the other hand, the jury is primarily concerned with the facts, but they must apply the law to the facts, and that application in arriving at a general verdict is certainly a judicial process.

Nevertheless, the jury is essentially a fact-finding body, presumably chosen from a fair cross-section of the community. And the experience of the writer as a trial judge of State Courts, both civil and criminal, of general jurisdiction, throughout one of our States, is convincing that in general the jury performs its functions well and

Each month a member of the Journal's Advisory Board is asked to contribute an editorial signed by him. In this way we hope to be able to reflect the many facets of opinion, and the active interests, of lawyers, judges, and teachers of law, in all parts of the United States. The views expressed by each contributor are his own, and are not necessarily those of the Advisory Board or the Board of Editors.

Editor to Readers

This is the month for your decision that you will attend our 1948 Annual Meeting, to be held in Seattle September 6-9. The time to obtain your reservations for the trip is here. Those who can do so will enjoy immensely the itinerary and the friendships of the special train, one way or both. The larger number of those who go to the West Coast for the meeting will do so at their own times and by their own choice of routes. Our railroad advertisers offer their attractive facilities and routes. A summer sojourn in scenic Washington

in furtherance of justice, in those cases which are appropriate to that method of trial; that is to say, in cases involving issues not unduly complex, and where there is careful instruction on the law by the judge.

The theory, sometimes expressed, that the charge of the Court to the jury is a matter of little or no consequence in the determination of the verdict, is manifestly erroneous. The judge, clothed with his robe of office, delivering an oral charge while sitting, not standing, and hence in the role of a respected and patient instructor, is the dominant figure in the trial, from the viewpoint of the jury, as will be verified by looking into their faces as they endeavor to concentrate upon all the judge has to say. The judge's difficulty, however, is to keep within the formulas of the appellate Courts, and at the same time to make the applicable law intelligible to the jury. To this end, he should translate the formulas into the language of everyday life. Standardized instructions, now coming into use, may indeed be quite helpful, but like all "canned products" they necessarily lack freshness. Likewise, instructions or requests to charge prepared by counsel, if the same are merely read to the jury, without concrete explanation or elaboration, will probably be meaningless. They will be much more effective for an understanding of the case if the judge weaves them into his general charge—a task not free from difficulty.

How can the system be further improved? The rather obvious answer is: By having better judges and better juries. So far as the jury is concerned, it might perhaps be improved by restricting the statutory exemptions from jury service, without encountering the objections sometimes raised to the so-called "blue ribbon" jury. But better still is the cultivation of an ideal of good citizenship, emphasizing the dignity and importance of jury service performed with justice and intelligence, remembering that trial by jury is not only a vital part of our democratic inheritance but is essential to the preservation of our liberties.

LANNEAU D. LIDE

Twelfth Judicial Circuit
Marion, South Carolina

State will be unforgettable. Many of our members will wish to use the opportunity to visit Los Angeles, San Francisco, Portland, and other cities and playgrounds in that great American area. We urge that you decide now to go to the West Coast and Seattle if you possibly can and that you obtain your reservations. It will be a great and stirring meeting of men and women who hold to the American faith.

* * * * *

We urge that every lawyer who received from the Department of Commerce its questionnaire as to the earnings and costs of law practice should read without delay the first article in this issue, which explains a lot of points to be observed in responding to the inquiry,

and that he should then fill out the questionnaire as accurately and completely as he can, and mail it to the Department. The questionnaire is in aid of the Survey of the Legal Profession and has the full support of the independent Council which our Association put in charge of this highly important Survey. About one lawyer in eight will receive a questionnaire—probably about 5000 members of our Association will get one. No recipient should withhold his full and prompt cooperation.

* * * * *

The following sentence in Winston Churchill's unforgettable *Memoirs*, chronicling events that led up to "the unnecessary war", reminded of what Sir Norman Birkett and Ben W. Palmer have written for us as to art and effectiveness in the selection of words and the formulation of telling phrases: "All these [events described] constituted a picture of British fatuity and fecklessness which, though devoid of guile, was not devoid of guilt". Nevertheless, such a word-selection is not recommended for use before the average jury.

* * * * *

The Laff Book Club in New York City has appropriately chosen Senator Alexander Wiley's little book, *Laughing with Congress*, as its June selection. Editorials, articles and reviews concerning the book continue to appear in newspapers throughout the country; some of them have been put in the *Congressional Record* by Senatorial colleagues. Walter P. Armstrong reviewed the book for us in 34 A.B.A.J. 1195, December, 1947; if you have not already obtained and read the book, you may well do so, as you will be regaled by the incidents told of what the late Will Rogers called The Capitol Comedy Club of Washington, D. C.

* * * * *

The Judicial Section of our Association, through a committee headed by United States District Judge John W. Delehant, of Nebraska, has sent to all of its members a reprint, from the *Canadian Bar Review* (34 A.B.A.J. 160; February, 1948) of Harry D. Nims' pragmatic symposium on the usefulness of pre-trial procedure.

* * * * *

From England comes the interesting Easter issue of *Graya*, now re-established after its suspension during the war years, as the magazine for circulation among the members of Gray's Inn. *Graya* reports that "the rebuilding of Gray's Inn has begun in good earnest". The editor of *Graya* reminds his readers of the words of Lord Macmillan in his address to the American Bar Association in 1930. The gifted speaker quoted from Sir Walter Scott's *Guy Mannering* the words of Pleydell, the Scottish advocate who, pointing to his well-stocked bookshelves, said

These are my tools of trade. A lawyer without history or literature is a mechanic, a mere working mason; if he

possesses some knowledge of these he may venture to call himself an architect.

Lord Macmillan added:

While literature for its own sake has always possessed a special attraction for the members of our profession, I venture to suggest that its study has a utilitarian side also. Words, the spoken and the written word, are the raw materials of the lawyer's trade, and the possession of a good literary style which enables him to make effective use of that material is one of the most valuable of all professional equipments.

* * * * *

The issue of the *Look* magazine released on May 11 contained a notable and much-needed article by James B. Reston, foreign affairs expert for the New York *Times*, on "What's Right with the U. N.". The gloomy side of the international organization is so often depicted and high-lighted that an objective summary of gains and successes was most usefully brought to millions of readers.

* * * * *

Times Square in New York City was the scene in May of a striking illustration of the difference between Communist tactics and the American way. The Soviet has for years operated in the Stanley Theater, a few doors south of Times Square in Seventh Avenue, an incessant and aggressive propaganda by movies depicting the glories of Kremlin collectivism and the decadence of the Anglo-Saxon way of life. More than a year ago, when a Justice of the Supreme Court of the United States wished to see a portrayal of himself in the role of chief American prosecutor at the Nuremberg trial, he came to New York and the Soviets' theater. The Soviet version magnified and glorified the Russian participation and claimed credit for things which Americans did; the American government and American producers and theater operators did not obtain and show to our people the films of this historic trial. Several plays and other movie theaters in the same region are unconcealed and incessant propaganda for Communism. None has been molested. No such tolerance could have taken place in Prague, Bucharest or Moscow. Yet when, early in May, the Roxy Theater began its showing, a few blocks north of the Stanley, of the Twentieth Century-Fox film, "The Iron Curtain", open violence was resorted to by the Communists to prevent or break up the showing. Communist pickets massed to intimidate Americans from attending. The film itself is only a dramatization and representation of the contents of a Royal Commission Report in Canada, as to the corrupting activities of the Russian spy system in the Dominion's capital. Eminent judges of the highest Court of Canada heard the evidence, brought out by lawyers who included two former Presidents of the Canadian Bar Association (Judge E. K. Williams and F. Philippe Brais), and made careful findings which told the story in a restrained fashion, largely with documents from Soviet sources. Notably, the fact that Soviet spying in Canada was but a small segment, a "side show", of

the espionage on a larger scale in the United States, was all but concealed by the Royal Commission. Yet the Communists and their dupes are unwilling to let this true story be told to American audiences, in the same area where the Communists have long carried on their propaganda without molestation.

* * * * *

The *Congressional Record* for March 9 contains in full (94 Cong. Rec. [No. 44] A1536) the statement made before a joint meeting of the Senate and House Committee on the Judiciary by John D. McCall, of Dallas, Texas, in behalf of our Association, in presenting and supporting the resolutions adopted by the House of Delegates on February 23 (34 A.B.A.J. 279; April, 1948) in favor of the Tidelands bill (S. 1988), which has since been favorably reported. Mr. McCall made a closely-reasoned legal argument in advocacy of our Association's considered conclusions. His statement was placed in the *Record* by Representative Wright Patman, of Texas.

* * * * *

As reported in "Courts, Departments and Agencies" in this issue, the Supreme Court of Arkansas on April 19 reversed, by a vote of five to two, its previous decision as to the validity of some 1750 divorces granted by Chancellor Ruth Hale during the twelve months she sat in the Chancery Court for Pulaski County (see 34 A.B.A.J. 224; March, 1948). The Court's previous decision invalidated the whole statute creating the Court, on the ground that it contravened the provision of the State Constitution that the Governor, not the Legislature, should make judicial appointments to fill vacancies. Mrs. Hale had been serving as a master in the Chancery Court, and the legislation creating the Second Division of the Court had provided that she should be its Chancellor until an election had been held. The decision on rehearing recognized that she was a *de facto* judge. Thereby it ended the embarrassment of 10,000 to 15,000 persons as to their marital status or property rights under decrees which she had granted. The Arkansas and Little Rock Bar Associations have disavowed a share in the responsibility for the original legislation (33 A.B.A.J. 274; March, 1947).

* * * * *

In *This Week* magazine for April 4, Carey Wilson quoted the following as from Maxwell Anderson, as adapted by Everett Ross Clinchy:

The American Constitution is but the roof and walls of a faith which dwells within. Our cities and towns that stand gloriously against the sky and seem so strong and durable, are blown into these shapes by the spirit which inhabits them and will subside again when the spirit is withdrawn. As long as the people keep their faith, that faith will keep the nation . . . May God inspire in the hearts of all of us the secret singing of the faithful.

Speaking of "the 'secret singing of the faithful'—of those whose faith in God, in man, in the American way of living swells like music, beautiful and triumphant, through all the discordant din of our times", Mr. Wilson declared that "Today these words are a standard and a gauge for Americans to live by".

* * * * *

The Board of Governors of our Association, at its meeting in Washington on May 18, decided as a matter of Association policy that it will not elect to Association membership any lawyers who are stated or known to be members of the National Lawyers' Guild. This decision was based upon the action taken by the Thomas Committee of the House of Representatives on the basis of the evidence gathered by it, as to the attitude and policies of the National Lawyers' Guild in supporting what are characterized as Communist-Front activities. The Board of Governors is of the opinion that members of the National Lawyers' Guild are not likely to be staunch or sympathetic in their support of the policies and objectives of our Association, included its declared warfare on Communists and Communism, as voted by the House of Delegates (34 A.B.A.J. 281, April 1948; 34 A.B.A.J. 302, May, 1948). The membership of our Association includes lawyers of widely divergent political faiths and social and economic beliefs, within the framework of militant support for the American form of government and law and individual rights. The decision was against electing lawyers whose existing affiliations are known to be with a Guild whose stand on those basic issues has been so sharply challenged.

* * * * *

Lawyers of America are vastly indebted to *Life* magazine for its pictorial article in the May 17 issue—"Trial by Jury". When plays or motion pictures or radio scripts portray unfavorably the acts of some lawyers or judges, or the operation of our legal system, we of the organized Bar are quick to express regret or protest. When a great national magazine of large popular circulation presents the administration of justice as a dignified, honest-minded and worthy proceeding, we of the Bar are delighted with the opportunity to say heartily and sincerely: "Thank you". To lawyers and people we think the pictures and narrative produced by *Life* will be deeply moving. We hope that the article will be widely read, because so constructive a portrayal of the faithful, day-after-day work of the thousands of competent, diligent judges and conscientious juries aided by independent and honorable lawyers is a bulwark against Communism and positivist efforts to undermine confidence in our Courts and laws as bulwarks of the lives, liberties and property of our people. For American lawyers we say: Many thanks to *Life* magazine!

Lawyers in the News



Tracy E.
GRIFFIN

■ Head of our genial hosts at the 1948 Annual Meeting of our Association in Seattle on September 6-9 will be this dynamic lawyer and amateur playwright, who is the Chairman of the general committee which has some 300 members of the Seattle and Washington State Bars hard at work on the arrangements. GRIFFIN is not only one of the State's "top-flight" attorneys but a skillful director of amateur productions on the local stage. So he knows what is ahead of him in "the biggest production job", he calls it, that he has ever attempted.

While others of Washington State's committee are holding out the well-founded prospect of a lot of fun for visitors in the State's evergreen playlands and amid its famed scenery of mountains, lakes, and sea, GRIFFIN says: "If I make no promises, nobody will be disappointed". But he has said the same thing about a dozen full-length plays he has written, staged, rehearsed, and produced; and no one has ever been disappointed about their satire, hilarity, and good clean fun. He will be a genial and

well-liked, as well as a diligent and competent, host.

GRIFFIN was born in 1891 in Enwasco County, Oregon—about eighty miles from Portland—the son of a stockman. He was graduated from the University of Washington Law School in 1915, and had meanwhile done his first writing as the first columnist on the *University Daily*.

In 1921 he formed a law partnership with George E. Rummens, in Seattle. They are still at it, in the same building, in general practice. GRIFFIN says that "anybody in this part of the country who claims that he isn't practicing general law is bragging".

He became a member of our Association in 1937, and has taken an increasing interest in its work. He has served on nearly all of the committees of the Seattle and Washington State Bars, and has been president of the Seattle Bar Association. For the past ten years he has headed the work of the Legislative Committee of the State Bar, and he looks on this as the most useful service he has rendered for the public and the profession. He and the Committee have been responsible for such legislation as the increase in salaries for judges, an increase in the number of judges, the adoption statutes, the Uniform Business Corporations Act, and General and Limited Partnership Acts. In many projects of the organized Bar he has worked closely with Frank E. Holman, nominee of the State Delegates for President of our Association for 1948-49.

Seattle and Washington State provide most attractive setting for a great meeting of the legal profession. The scenic beauty of the State is as proverbial as the hospitality of the lawyers of the city and State. A meeting held in Seattle is unforgettable. The leadership and experience of Chairman GRIFFIN and his many committees assure a memorable convention which no member of our Association should miss if he can make the trip.



Bochrach

H. Graham
MORISON

■ A Virginia lawyer, member of our Association since 1936 and Vice Chairman of its National Junior Bar Conference in 1938, has been much "in the news" during April and early May as Assistant Attorney General of the United States, principally as trial counsel for the Government in the effective proceedings against John L. Lewis and the United Mine Workers before Judge T. Alan Goldsborough.

MORISON hails from Bristol, Virginia, but there seems to be controversy about him between Tennessee and the Old Dominion. Unlike the famous story of George Ade, both States claim him as a son who has made good. He attended the Choate School, at Wallingford, Connecticut, and received his B.A. and law degrees at Washington and Lee University in Lexington, Virginia. After practicing law for four years in Bristol, Virginia, he came to New York and was associated with the firm of Miller, Owen, Otis and Bailly, which the late Wendell Willkie headed after the national election in 1940.

MORISON became active in work for our Association and took part in its successful fight against the "packing" of the Supreme Court in 1937. In 1942 he became an assistant to John Lord O'Brien of the War Production Board in Washington, but in 1943 he enlisted in the Marine Corps. After he won his commission as a lieutenant, he served overseas until 1945, when he was returned to the staff of the Commandant of the Marine Corps in Washington, and was honorably discharged as a captain after V-J Day. He then entered the Department of Justice as a

Special Assistant to Attorney General Clark and became his Executive Assistant in 1946. In February of 1948 he was nominated by President Truman to be Assistant Attorney General.

MORISON is one of the first of the "alumni" of our National Junior Bar Conference to rise to high official position, but those who observed the ability and energy with which he worked in our Association and championed its objectives are not surprised by the effectiveness of his courtroom presentations in conspicuous cases.



Charles
SAWYER

■ An active practitioner of law and politics in Cincinnati and the State of Ohio, member of our Association since 1921, was named by President Truman on April 22 as Secretary of Commerce. Aside from his law practice, SAWYER has been engaged in such diversified activities as a directorship in the Cincinnati Baseball Club (which operates the "Reds"), ownership and executive offices in radio broadcasting stations in Dayton and Springfield, ownership of a daily newspaper in Lancaster, representation of Ohio in the Democratic National Committee, the ambassadorship to Belgium, and a trusteeship at Oberlin College. He stated that his appointment to the Cabinet came as a "complete surprise".

SAWYER was born in Cincinnati in 1887 and educated in its public schools. He was graduated from Oberlin College in 1908 and from the old Cincinnati Law School (now the University of Cincinnati College of Law) in 1911. He was thereupon admitted to the Ohio Bar, and has since practiced in his native city. In

World War I he enlisted in the infantry in 1917, served overseas for eight months, and came out with the rank of major.

During 1911-15 he was a member of the City Council in Cincinnati, and was Lieutenant-Governor of his State in 1933-34. As his party's candidate for Governor, he was defeated by John W. Bricker, member of our Association since 1925, now junior Senator from Ohio. During 1944-45 he served as Ambassador to Belgium and Minister to Luxembourg. He is a member also of the Ohio State Bar Association.



James F.
PRICE

■ The acting chancellor at the University of Denver since last September, before that Dean of the College of Law and the College of Business Administration, member of our Association since 1938, has been chosen as permanent Chancellor of the University, at the age of forty-two.

PRICE was born in Manhattan, Kansas, in 1906 and was graduated from Kansas State College, after which he received his law degree from Leland Stanford University. He was first in the banking business in Shanghai, China, and New York City, and then began his teaching career in California. From 1941 to 1943 he was Dean of the law school at Washburn Municipal University in Kansas, and then President of the Kansas State Teachers College at Emporia. In 1942-45 he was director of the Kansas Development Commission, and in 1945 moved to Denver to head the law school of its university. He is a member also of the California, Kansas and Colorado State Bar Associations.



Wheat

John Thad
SCOTT, JR.

■ This Texas lawyer, a member of our Association, has been in the April-May news and news photographs as a member of the National Mediation Board, in connection with efforts to avert the threatened strike of the railway brotherhoods on the railroads of the country. He had taken office by the appointment of President Truman on March 5.

SCOTT was born in Houston, Texas, in 1894; he attended the University of Texas, where he obtained his B.A. degree in 1916 and his law degree in 1920. Meanwhile, he had been overseas in the 344th Field Artillery, 90th Division, in World War I, and had risen to the rank of captain. His father had been active in law and politics in Texas.

The son practiced law in Houston from 1920 to 1943, and then was appointed to the legal staff of the NLRB, in which he served in several capacities. Then he was with the National Wage Stabilization Board, was a Referee with the National Railroad Adjustment Board, and recently a Referee with the Express Board of Adjustment, before his appointment to the National Mediation Board.

He has been active in Democratic politics in Texas, and was a delegate to the national convention of his party in 1932 and 1940.



Harris & Ewing

William T.
JOYNER

■ A North Carolina lawyer, member

of our Association since 1924, valued member of the Advisory Board of the JOURNAL, and member in 1945-46 of the War Department's Advisory Committee on Military Justice headed by Arthur T. Vanderbilt, was named on May 12 by Secretary of the Army Kenneth C. Royall, member of our Association since 1926, to serve on the three-man group of consultants to advise him concerning operational problems that may arise as to "terms of employment" during the Army's operation of the railroad systems of the United States.

JOYNER is a native of North Carolina, and was born in Goldsboro in 1891. He was graduated from the University of North Carolina and the Harvard Law School, and was admitted to the North Carolina Bar in 1915 and the District of Columbia Bar in 1932. In World War I he served as an officer in field artillery

units and was for a time an instructor in the School of Fire at Fort Sill, Oklahoma.

He was assistant general solicitor of the Southern Railway system in Washington in 1936-37; since then he has been its division counsel at Raleigh, where he practices law and has been active at times in Democratic politics in his State. He has held national office in the American Legion, and is a member also of the North Carolina and Wake County Bar Associations.

Other members of the consulting board constituted by Secretary Royall, are, in addition to Mr. Joyner, Edward F. McGrady, formerly Assistant Secretary of Labor, and HAROLD C. HEISS, of Cleveland, Ohio, member of our Association since 1942, who is forty-one years of age and was graduated from Western Reserve University (Cleveland)



John Henderson

HAROLD C. HEISS

continuously represented some, and at times all, of the other twenty railway labor organizations in proceedings before the Interstate Commerce Commission and fact-finding boards appointed by the President of the United States in railway disputes. For more than twelve years he has taken part in the trial and argument of labor law and insurance cases in many courts, federal and State, throughout the United States.

and from its law school in 1930. He has been in general practice in Cleveland since 1930, and in 1935 he became general counsel for the Brotherhood of Locomotive Firemen and Enginemen. He has con-

Functions of Board of Examiners for Hearing Examiner Personnel Are Broadened

■ The functions of the Board of Examiners for Hearing Examiner personnel, set up by the United States Civil Service Commission (see 33 A.B.A.J. 179; March, 1948), were on May 6 extended to all applicants for Examiner positions under the Administrative Procedure Act. Previously the Board's authority extended only to determination of the qualifications of present incumbents who had full civil service status.

The extended authority of the Board means that it will determine the qualifications of two new classes of applicants. First are those who are now Examiners but who do not have civil service status. Second are those who, whether in or out of Government service, are not now Examiners but have made application for certification as eligible for Examiner positions.

Applicants in the first of these additional classes are relatively few in number. The Board will pass upon them after careful investigation, much as it is now passing upon incumbents with regular civil service

status. However, these applicants will be considered by the Board along with "outside" applicants.

For its work in determining the qualifications of persons who are not presently Examiners, the Board will be augmented by the addition of associate members selected on a regional basis to "screen" applicants from their regions. These new members of the Board will be selected from among persons of eminence in the legal profession and the field of administrative law. The new personnel of the Board may be announced before this issue comes to the desks of our readers.

Apart from the 100 present Examiners with civil service status, there are more than 1000 applicants for the 200 or more positions to be filled. Many of these obviously do not meet the minimum qualifications provided by the regulations of the Civil Service Commission, but it is estimated that there are about 500 who meet at least those minimum requirements and therefore must be passed upon by the Board of Examiners for

eligibility. Some of these are "outside" applicants with excellent qualifications of experience, judicial temperament, tested independence, and freedom from ideologies and partisan subservience.

Nevertheless, it must be regarded that there are regrettably and surprisingly few applicants for these important positions. Only 500 have applied who meet the minimum qualifications. Of these it is estimated that 200 or more are already in the federal service in some capacity or other. The situation emphasizes that more applicants of first-rate qualifications are imperative—especially "outside" applicants. The subject was stressed in these pages in our April issue (page 303). The bench, the Bar and all others interested in improving the administration of justice, have here an opportunity for public service in interesting competent men for these positions. They should especially interest the younger lawyers of experience in administrative law fields.

"Books for Lawyers"

VOYENNAYA EKONOMIKA SSSR V PERIOD OTECHESTVENNOI VOINY. (*The War Economy of the USSR in the Period of the Patriotic War.*) By N. Voznesensky. Moscow: Ogiz. 1947. Pages 191.

In view of the seriously deteriorated relations and prevailing war-like tensions between the USSR and the United States, this report on the war economy of the USSR in World War II, of which some copies have now come to this country, assumes added significance. Nikolai A. Voznesensky is Chief of the State Planning Commission, Deputy Premier of the USSR, and a member of the powerful policy-making Politburo. Judging by the comprehensive reviews of this book thus far published in Russian academic journals, this treatise will probably remain for some time the leading official textbook on the political economy of the Soviet System. The dual use of the word "war" in the title of the book emphasizes the fact that in 1914 Russia participated in World War I without any war economy. According to the author's political and economic theories, Soviet Russia's invincible might to withstand the German onslaught and invasion in June of 1941, was due exclusively to the Soviet organizational feats in moving their industries to the East and to the structure of the planned socialist economic system, which has been and still is synonymous with the wartime economy of the USSR. Consequently, the post-war Soviet Russian political economy must needs continue to be directed by the same fundamental principles and experiences that guided the war-time economy of the USSR. Thus the monetary reforms

promulgated on December 16, 1947 are likewise reflections of this announced policy.

The book is replete with statistics and economic data to substantiate the thesis that total economic planning is inherent in the Soviet system because it utilizes the economic laws of production and distribution, the laws of value and costs in the interest of socialism as it is being effectuated in the USSR. More important, the Soviet economic system, which has stood them well preceding, during and after World War II. It follows, therefore, that these basic war-economy principles should continue to be the core and kernel of its national economy during the reconstruction period and for further industrial development of the USSR and eventually to surpass and overtake the leading capitalist countries, especially the United States.

Indicative of the tremendous industrial progress made during World War II are the following facts given by Voznesensky: In the final battle for Berlin alone, the Soviet (Red) Army had four times as many divisions, five times as much artillery, fifteen times as many tanks, and five times as many aircraft as before the war. Specifically, in April of 1945, the Russians had 41,000 guns and mortar, 8400 aircraft and 6300 modern break-through tanks (page 87); all of which were produced by Soviet industries, especially in the plants that were "migrated" and transplanted to the Urals and to Siberia following the invasion of Russia by Nazi Germany in June of 1941. The author states further that only the complete state control

over all of the segments of the national Russian economy could have achieved this combined gigantic industrial and military task.

True to form, Voznesensky pays the highest tribute that is humanly possible to the "Vozhd" (leader) Generalissimo Josef Stalin. He reiterates continually the statement that only now is it possible to fully appreciate the historic significance of the Stalin Five-Year-Plans for the destiny of the Socialist Revolution. The Five-Year-Plans are an embodiment of Stalin's genius that led the Soviet people and insured the complete triumph of their victory over Nazi Germany. Likewise, the author spares no panegyrics in emphasizing the role played by the Communist Party, under the leadership of Stalin, in guiding Soviet economic development. "To the Bolshevik Party belongs the honor and glory of a victory unparalleled in the history of man. Unbendable fortitude, unsurpassed mastery in the guidance of the war economy, and a titanic will to victory mustered all the forces of the people of the USSR to crush the enemy" (page 10).

By far and away this report is the most important statement of policy that has come out of the Kremlin since the last Communist Party Congress held in Moscow in March of 1939. Accordingly, it has been proclaimed in the USSR as a basic contribution to the political economy of socialism. Oddly enough, references to Marxism or to the writings of Karl Marx and to Communism are conspicuous by their absence. The dominant theme is centered on "socialism", on "Soviet Russia", and on the "inner strength of the planned economic system", but on neither Communism nor Marxism.

The author cites facts and figures to focus attention on the economic achievements and great industrial progress made by Soviet Russia in contrast to that of pre-Revolutionary or Czarist Russia. The Soviet Russian oil output on the eve of World War II was three and one-half times

as great as in Czarist Russia. Prior to the Revolution, Russia did not produce motor vehicles, tractors, aluminum, magnesium, or rubber. Similarly, the output of grain for the market was on the eve of World War II nearly twice as great as on the eve of World War I.

Under the general heading of imports, Voznesensky glosses over the positive contributions made by lend-lease from the United States to Soviet Russia in its military struggle against Germany. His contention is that munitions, food and industrial equipment from abroad aggregated only four per cent of Soviet Russia's own total industrial production. Evidently, the author purports to minimize the part played by lend-lease in Soviet Russia's victory over Nazi Germany. The moral drawn and repeatedly stated throughout the book is that if it had not been for the total industrialization of the national economy and the transformation of the Stalin Five-Year-Plans to a war economy during the ten years prior to the German invasion of Russia, the Soviets would not have been able to offer such formidable resistance against the invaders and to ultimately defeat the enemy.

Each of the seventeen chapters concludes with a paragraph the first sentence of which always begins with the phrase "Takin obrazom"—"It follows therefore. . . ." Thus the definitive conclusions and categorical statements made at the end of each chapter will of necessity have to be taken in the form of directives to executives, to administrators, to Communist Party leaders and to the professional group concerning the fundamental principles and "inner strength" of the Soviet socialist economic system and its "proven" advantages over the capitalist economic system. The author continually reiterates the craven Soviet fear of the capitalist countries. "As long as the capitalist encirclement exists, it is of importance to keep the powder dry. As long as imperialism exists, the danger of an attack on the USSR remains; hence the danger of

a New Third World War" (page 190). Repeating the shop-worn cliché that the capitalist countries of Europe are in grave danger of being enthralled by the American monopolies under the guise of "assistance" (Marshall Plan) the author makes this categorical statement (page 166):

The socialist economy of the USSR was and remains independent of the capitalist world and is developing according to its own laws . . . Soviet economic development is based on the state monopoly of foreign trade, arising from socialist ownership of the means of production. These features of the Soviet economy should be borne in mind by all who desire to develop economic relations with the Soviet Union.

The Soviet socialist economic system is not guided by the profit motive and its laws of value and costs are radically distinguished from those in the capitalist economic system. The Soviet system does not engender those conflicts which inevitably lead to capitalist crises of overproduction and depression. Socialist state planning resolves and liquidates the conflicts which arise in the process of development of the Soviet economy between the grouping requirements of the whole Socialist society and the level of production attained. From this line of reasoning Voznesensky concludes that the possibility of crises and unemployment is precluded in the USSR.

Also, attempts at planning in capitalist countries are not based on any real economic forces and therefore are doomed in advance to utter failure. Voznesensky takes exception to "the judgments of certain theorists, who consider themselves Marxists [presumably Dr. Eugene S. Varga and his associates], on the 'decisive role of the state in the wartime economy of capitalist countries' are nonsense, and unworthy of consideration" (page 31). In refuting these "so-called Marxists", the author says that in 1944, 75 per cent of the total United States Government war contracts were awarded to only 100 leading monopoly-capitalists in the United States.

Like many another text on the

Soviet political economy, Voznesensky reports that they are making great progress in their concerted efforts to reconstruct and to further develop the Soviet-economic system. He concludes the book with the prognostication that they are definitely moving in the direction not only of strengthening the Socialist society, "but of surpassing and of overtaking, in the economic sphere, the leading capitalist countries, including the United States of America".

CHARLES PRINCE

New York City

THE PAPERS OF WALTER CLARK: VOLUME ONE—1857-1901. Edited by Aubrey Lee Brooks and Hugh Talmage Lefler. Chapel Hill: University of North Carolina Press. 1948. \$6.00. Pages xv, 607.

Our readers are not unacquainted with the career, personality and character of Walter Clark. Among the delightful sketches of lawyers and judges contributed to the *JOURNAL* by George R. Farnum was one of Clark.¹ There also appeared in these columns a review by our present Editor-in-Chief of the biography of Clark written by Aubrey Lee Brooks, one of the editors of the present volume.² The Farnum sketch was based upon the Brooks biography, which is brief and uncritical. Here is the documentation of the biography—the record on which the brief is based. It is not a complete record, for it ends in 1901 and Clark lived until 1924. Apparently at least one other volume is contemplated, for the title page describes this as "Volume One — 1857-1901".

There is no room for adverse criticism of the present work. The editorial leads that preface the chapters are informative and critical; the judgment of the editors in including

1. Walter Clark: *The Saga of a Fighting Career*, 30 A.B.A.J. 515; September, 1944.

2. Walter Clark: *Fighting Judge*. Chapel Hill: University of North Carolina Press. 1944. The publication of this biography disclosed the fact that opinion in North Carolina was divided as to Walter Clark. Robert W. Winston wrote a severe review of the Brooks volume (*North Carolina Law Review*, Vol. 22, page 181), which was in turn answered by Aubrey Lee Brooks (*North Carolina Law Review*, Vol. 22, page 353).

and excluding the abundant writings of Clark is exceptional; the proof-reading, typography and format sustain the right of the University of North Carolina Press to be classed as one of the best of the university presses.

It is not likely that another volume of Clark's papers will either change or materially modify any opinion derived from this one. Clark emerges as a colorful, a controversial and in many ways, a contradictory character. According to the form sheet he should have been a Bourbon; in fact, his views were always liberal and frequently radical.

Clark by inheritance was of the planting, slave-owning squirearchy of the Old South. When the War Between the States came, he was fourteen. With his body servant, Neverson,³ a lad of about the same age, who became his batman, he rode away to serve in the Army of Northern Virginia under Lee, "Stonewall" Jackson and Jeb Stuart. He eventually attained the rank of lieutenant colonel—the youngest in either army. Appomattox ended all hope of the permanent military career on which he had set his heart, but the soldierly qualities remained⁴: he was ever combative, not only mentally but physically, and at least once challenged a detractor to a duel. In his later years Clark, with his gray mustache and slight imperial, was in appearance a typical Confederate colonel. He never missed an opportunity to glorify the feats of the Confederate Army; with him it was a labor of love to compile a history of all the North Carolina Regiments.⁵

Although Clark was as proud of the past as any of his former comrades, his outlook on the future was antithetic to theirs, for he was a crusader for change. Before he went on the bench he had been one of North Carolina's leading lawyers and general counsel for the Duke tobacco interests—a background similar to that of most conservative judges. During his thirty-nine years on the bench—four as Superior Court Judge, and thirty-five as Justice and Chief Justice of the State Supreme Court—

Clark was never conservative and indeed, as the years passed, became increasingly radical. He was a constant advocate of procedural reform and a severe critic of many common law rules which he desired changed by legislation. He not only anticipated Brandeis in the use of extrajudicial data in his dissenting opinions but made them vehicles for promulgating many of his general views.

In constitutional law Clark was an extremist: That due process was entirely procedural was the mildest tenet of his creed; to him the Convention of 1787 was a reactionary body and the Constitution it produced a highly imperfect instrument. As strongly as he disapproved of the powers granted, it was even more indefensible that the judiciary had usurped the function of invalidating acts of Congress. He favored a convention which would in great part rewrite the Constitution and which as an important part of its work would eliminate life tenure for federal judges and provide for their election by the people.⁶ William Howard Taft was no doubt more than half serious when he made the jocular remark that he would not trust Clark with the Constitution overnight. Perhaps the same feeling decided Woodrow Wilson against nominating Clark as a Justice of the Supreme Court of the United States when in 1914 he considered him for that position. Clark thought, however, that only his age (67) prevented his appointment, and lamented that he was too young to be a brigadier in the Confederate Army and too old to be a Supreme Court Justice.

While Clark's views on the Con-

stitution have not been accepted, many of his other demands for change have been realized; he advocated popular election of senators, a safety appliance act, regulation of railroads and other public utilities, a rigid enforcement of the Sherman Act, child labor laws, workmen's compensation acts, and the complete emancipation of women.⁷

With the exception of his judicial opinions, this volume perpetuates Clark's record. It is the stuff not only of biography but of history. It contains his letters home from the Confederate Army and his addresses and articles advocating the many causes he espoused.

For the general reader the army letters may be the most interesting.⁸ Clark's solicitude for the safety and welfare of Neverson, his *fidus Achates*, illustrates perfectly the attitude of the responsible slave-owner. His description of the privations and courage of the Confederate soldier proves the validity of an epic story. The significance of the other material is the self-portrayal of a son of the ante-bellum South who became an advanced liberal.

Most of Clark's political forays—including his candidacy for the United States Senate—were undertaken while he was on the bench. His taste and judgment in engaging in them may be questioned; but there can be no question about his capacity, sincerity or courage. It was no doubt a matter of temperament, for Clark to the end could have applied to himself Browning's lines:

I was ever a fighter, so one fight more,
The best and the last.

WALTER P. ARMSTRONG

Memphis, Tennessee

3. In his biography of Clark (page 30) Brooks writes: "One who has never shared such an experience cannot possibly understand the thrill and joy of a white boy privileged to play, hunt and swim with Negro urchins who obeyed and adored him and called him 'Master'." It was the custom in slave-holding families to give to each boy a colored lad as his body servant. My grandmother gave my father Sandy, in 1861, when both boys were seven.

4. On October 15, 1864, Clark wrote his mother: "It is my intention, and has been, should our young Confederacy go down in the billows: which threaten to engulf it (which Heaven forbid) to collect a band of the brave around me and in a brighter clime and more unclouded skies seek that which Fortune denies me on my native shores.

Maximilian of Mexico will not refuse a brave man's sword and I trust I know how to wear one." (page 123). Clark volunteered for combat service in the Spanish-American War.

5. To Clark, Thaddeus Stevens was "Robespierre without his integrity,—and a Sumner,—a Danton without his talents." (page 168)

6. Clark also favored the popular election of postmasters.

7. Clark insisted that the Constitution required public ownership of the telegraph and telephone lines as a part of the postal service.

8. Cf. the letters home from privates in the Confederate Army, quoted in *The Life of Johnny Reb*, by Bill Irvin Wiley. Indianapolis: Bobbs Merrill Company, 1943.

COMMUNISM AND THE CONSCIENCE OF THE WEST. By *Fulton J. Sheen*. Indianapolis: Bobbs-Merrill Company. April, 1948. \$2.50. Pages 247.

Americans who are looking for guidance, and for ways and means, to combat Communism in the United States will find in this book material that should lead them to a good deal of thinking. It is customary to think of Communism as a philosophy which came out of Germany—from Karl Marx, Hegel and Fierbach—and grew to full flower in Soviet Russia. Monsignor Sheen makes his challenge to the sluggish conscience and decadent religious faith of the West—the materialism, the positivist and relativist philosophy, the *laissez faire* liberalism that discarded God and the absolutes of law and morality and runs government on the "hand-out" basis. All of these attitudes he regards as Western in their origin but carried to extremes and given logical, dynamic force in world Communism today.

There is little of economics, sociology, or politics in this well-poised, earnest work. The author sees the struggle against Communism as successful only if it is based on spiritual values, the restoration of faith, the recovery of belief in God and the dignity and worth of the individual soul rather than the collective man and the dominant state. The noted cleric holds no brief for unfettered, materialistic capitalism as an acceptable alternative to Communism. He sees both as manifestations of the machine age, of over-emphasis on the production and acquisition of goods, of separating the concepts of rights from those of duties, and of subordinating the spiritual side of life to a point where family life disintegrates, schools and colleges are pervaded with irreligion, and law is torn loose from its firm foundations in religious and moral standards.

Yet Monsignor Sheen does not urge that we should hate Communists or Russians as persons, but urges the tolerant view that we should hate and fight their evil philosophy in every way we can, first and most

of all by regaining our own faith, recognizing our own share of the blame that Communism is rampant, remedying the defects in our own economic and political systems, waging unceasing war on all forces of greed and hate and class consciousness that obscure and weaken the human soul, and striving for a unity of all religious people to resist the lawless and anti-religious tenets of Communism. His chapters on "The Basic Defects of Communism" and "How to Meet Communism" are well worth reading and study. W.L.R.

THE GROWTH OF ENGLISH REPRESENTATIVE GOVERNMENT. By *George L. Haskins*. Philadelphia: University of Pennsylvania Press. 1948. \$2.00. Pages xi, 131.

Professor Haskins¹ suggests that "dissatisfaction with representative institutions has of late become widespread" and that this fact lends interest to an inquiry into their beginnings in order better to understand their nature. He adds that recent investigations have given historians cause to question the accepted outlines of even a generation ago and made it worthwhile to re-examine the conclusions of earlier writers.

It is the second rather than the first of these reasons which makes significant this essay, the substance of which was delivered as a series of six lectures before the Lowell Institute in Boston in 1939.

Professor Haskins has not been tempted, as have some recent writers, merely to paraphrase history already written and to seek to give to the old story a new timeliness by attempting to relate it to the present world situation. With the light of the sources and of recent studies he has with brilliant scholarship challenged long-standing concepts. His theme is not so much the evolution of parliament as a demonstration of how and why the representative feature of parliament became its significant feature.

The title suggests that Professor Haskins is concerned with the development of representative government; indeed, in his preface he

writes: "The subject of this book is the growth of the English parliament from its beginnings in the thirteenth century to the outbreak of the civil wars in the seventeenth". (page ix). It is true that the house of commons as we know it dates from the seventeenth century and that its procedure is no older than the eighteenth. While Professor Haskins refers to the seventeenth century parliaments, his study, despite his title and his declared purpose, is in the main of the development of parliament, up to the end of the fifteenth century, when we find the beginning of representative government. It would be more accurate, therefore, to say that this study is of the origin rather than of the growth of representative government.

The importance of Professor Haskins' work is in the challenge to the old masters of English constitutional history—Stubbs, Hallam, Freeman and even Maitland. Of Stubbs: "The classic account of the beginnings of the house of commons is that of the learned Bishop Stubbs. Stubbs' account, however, has been said to resemble the book of Genesis in two important respects—'it describes an act of creation and it no longer commands general acceptance'". (page 67).

Professor Haskins' disagreement with his elder brethren derives from the fact that they were content to find the origin of representative government in Simon de Montfort's Parliament in 1265 and Edward's model Parliament of 1295—patriotic grants of representative government. This idea in Professor Haskins' opinion is a myth and "must be dismissed along with such legends as the landing of the Pilgrims on Plymouth Rock". (page 231). He finds the origin of representative government "not in any deliberate act of creation, but in the social fabric of the age". (page 23).

1. Professor Haskins is a graduate of Harvard College and of Harvard Law School, and in 1935-36 was a Henry Fellow at Oxford University. As a member of the Society of Fellows at Harvard he studied English constitutional history and law for six years. He is at present a member of the faculty of the University of Pennsylvania Law School.

Professor Haskins' conception, stated with over-simplification and resulting inexactitude, is therefore quite different from that of earlier historians. After the Norman Conquest, the Kings began to summon the barons for consultation and advice. This assembly gradually developed into a Court which granted extraordinary relief which the king's Courts could not or would not give—a function later taken over by the Chancellors. As the wealth of the shires and towns increased and the Kings' financial necessities became more pressing, knights and burgesses were summoned to attend so that they might consent to the imposition of taxes. For many years the knights and burgesses came unwillingly, assented reluctantly, and were dismissed while the King and the barons continued to discuss problems—legislative and judicial. Eventually, excluded from the more important deliberations of the Council, the members of the third estate began to meet separately. Tentatively they imposed conditions upon their assents to taxation or "gracious grants". These conditions were set out in petitions to the King—petitions by suitors to a Court. If granted, as asked or modified, the result was the judgment of a Court. These judgments in time became statutes, because they were binding upon all and not merely upon parties to a litigation.² Eventually the financial necessities of the King became so pressing and the wealth and power of the towns and shires so great that the commoners successfully insisted that no petition of theirs should be amended without first being referred back to them. It was this access of power that made representation of town and borough desirable, and here we find the seed of effective representative government.

After all, Professor Haskins has pointed out by the emphasis of understatement a timeliness in his study. As the centuries marched on, gradually the importance of repre-

sentative self-government came to be realized.

All we have of freedom, all we use or know,
This our fathers bought for us, long and long ago.

Ancient Right unnoticed as the breath we draw;
Leave to live by no man's leave underneath the law.

Lance and torch and tumult, steel and gray goose wing,
Wrenched it inch and ell and all slowly from the King.

—a victory too hardly won to be lightly forfeited.

WALTER P. ARMSTRONG

Memphis, Tennessee

CASES AND OTHER MATERIALS ON LEGISLATION. By Horace E. Reed and John W. MacDonald. *University Casebook Series. Brooklyn: The Foundation Press. 1948. \$8.50. Pages xlviii, 1357.*

Although this book was designed to be a "teaching tool" useful in developing a law school course in "the methods of the legislative process and in the judicial techniques of applying statutes in the solution of legal issues", its subject-matter entitles it to be noted as more significant than "just another casebook" in a standard series that has been expertly prepared. Belatedly it is coming to be recognized that although, as the authors point out, "the statute book is the basis of legal practice" and "many law students are prospective legislators", until lately most lawyers have been commencing their professional careers with little knowledge of the handling, let alone the creation, of legislation. Nor is there evidence that this defect and neglect in legal education are remedied at any stage of the career of the average lawyer.

The authors here are in the law schools, respectively, at the University of Michigan and Cornell, which began in 1934 their pioneering in this field of law. All manner of sources, including this JOURNAL and the Annual Report volumes of our Association, have been drawn upon for exploratory material. The significant thing is that such a casebook has been capably prepared and published.

AMERICAN COLLEGE DICTIONARY. Edited by Clarence L. Barnhart. New York: Random House. \$5.00. Pages xl, 1432.

Sir Norman Birkett and Ben W. Palmer have written recently in the JOURNAL concerning the need that lawyers acquire habits of accuracy, art and skill in the use of words, for the drafting of legal papers, for courtroom arguments, for public explanation and advocacy of public causes, and for written and oral presentations generally (see Birkett: "The Art of Advocacy: Character and Skills for the Trial of Cases", 34 A.B.A.J. 4, January, 1948; Palmer: "The Right Use of Words: Skill in Phrasing Essential for Lawyers", 34 A.B.A.J. 368; May, 1948).

The handiest and most useful adjunct to etymological accuracy and adequacy of vocabulary that we have lately seen is this dictionary, which contains more than 125,000 entries and more than 60,000 technical and scientific definitions, including concise legal definitions, prepared with the aid of some 355 authorities in the fields covered. The pronunciation key is down-to-date and convenient, with American placed before British usage. The words included were selected by a kind of Gallup poll called the Lorge-Thorn-dike Semantic Count, based on the frequency of the recurrence of words in about 25,000,000 running words of texts.

It used to be that there was often a lag of about twenty-five years between the active use of a new word and its inclusion in dictionaries. Editor Barnhart said that "lexicographers waited for words to filter through to them". The compilers of this dictionary appear to have gone out into the many new fields of human knowledge and taken the newer words literally out of the experts' mouths. Foreign phrases, place names, given names, abbreviations, synonyms and antonyms, etc., are put in alphabetical lists. There also are valuable guides to good usage, to help solve everyday problems of punctuation, grammar,

2. Invariably these petitions of the Commoners in form sought to have the law as it was assumed already to exist declared, not to have new law created as by a modern legislature.

rhetoric and usage generally. For a lawyer's desk or library, such a lexicon and glossary could well be standard equipment.

JEFFERSON THE VIRGINIAN. By Dumas Malone. Boston: Little, Brown and Company. 1948. \$6.00. Pages 470.

Of particular interest to lawyers are Chapters V, IX and XVIII-XX of this book. These deal with Jefferson as a law student, as a practicing lawyer, and as a member of the Virginia Legislature and of the committee for revival of the laws of that commonwealth after the Revolution in order to bring them into accord with American principles of government and eliminate provisions peculiar to the English monarchical system. Quite timely, in the light of recent Supreme Court decisions where both majority and minority cited Jefferson as an authority, is the discussion in Chapter XX, entitled "Church and School", of Jefferson's famous statute for religious freedom and of his services to the cause of public education.

All of the author's twenty-eight chapters, however, will be welcomed as a charmingly written, well-documented and highly authoritative survey of the public services of an eminent American lawyer. The volume covers the period from Jefferson's birth in 1743 up to the year 1784, when he sailed for France on a diplomatic mission to negotiate treaties of commerce. Dr. Malone plans to continue his biography with three further volumes: *Jefferson the Democrat* (1784-1801); *Jefferson the President* (1801-1809); and *Jefferson the Sage* (1809-1826). The complete series, to be called *Jefferson and His Time*, will doubtless rank with Beveridge's *Life of John Marshall* as a most useful and important portrayal of the formative era of American government and politics.

EDWARD DUMBAULD¹

Washington, D. C.

1. Mr. Dumbauld is a Special Assistant to the Attorney General of the United States, and is the author of *Thomas Jefferson American Tourist*, concerning which Judge Robert N. Wilkin wrote a short review in 34 A.B.A.J. 38; January, 1948.

FEDERAL TAXES—ESTATES, TRUSTS AND GIFTS. 1947-48. By Robert H. Montgomery and James O. Wynn. New York: Ronald Press Company. 1947. \$10.00. Pages xii, 1050.

This is a useful book of reference for the lawyer in his everyday work in its field. Its practical suggestions will often be a boon for the busy. Mr. Montgomery's prefatory comments as to the state of confusion in tax laws "intended to take from the rich and give to the poor" are incisive but temperate in tone. His most critical analyses of defects are often useful to practitioners.

PROCEEDINGS OF NEW YORK UNIVERSITY SIXTH ANNUAL INSTITUTE ON FEDERAL TAXATION. Albany, New York: Matthew Bender and Company. 1948. \$20.00. Pages xvi, 1260.

A useful volume for the practitioner is this compilation of the papers and addresses, many of them expanded and annotated, during the two-week session of the Institute last November. Those who have the prior volumes will wish to keep their set complete; copies of the proceedings of the fourth and fifth Institutes are still obtainable; the first three are out of print. The current volume is a practical anthology of current tax problems, aside from those arising under the 1948 legislation; the emphasis is on the questions with which the practitioner has to cope.

THE BOOK OF THE STATES. 1948-49 Edition. Chicago: Council of State Governments. \$7.50 (\$10.00 with two supplements in 1949). Pages 780 (with 135 tables).

This standard reference work on government in the States and territories has come to its seventh edition, and is comprehensive and authoritative in its information, including rosters of State officials, legislators, etc. The nature and extent of the post-war readjustments are emphasized in the descriptive articles. We do not know where else as much information about the State governments can be as quickly and dependably obtained.

We Recommend . . .

ORDEAL OF THE UNION. By Allan Nevins. New York: Charles Scribner's Sons; 1947; \$10.00 (2 vols.); Pages x, 593, 590. (Reviewed in 34 A.B.A.J. 229; March, 1948.)

COMMUNISM AND THE CONSCIENCE OF THE WEST. By Fulton J. Sheen. Indianapolis: Bobbs-Merrill Company; 1948; \$2.50; Pages 247. (Reviewed on page 494 of this issue.)

A MODERN LAW OF NATIONS. By Philip C. Jessup. New York: The Macmillan Company; 1948; \$4.00; Pages 221. (Reviewed in 34 A.B.A.J. 401; May, 1948.)

THE LIFE OF ROSCOE POUND. By Paul Sayre. Iowa City, Iowa: College of Law Committee; 1948; \$4.50; Pages 412. (Editorial comment in 34 A.B.A.J. 219; March, 1948.)

LAUGHING WITH CONGRESS. By Alexander Wiley. New York: Crown Publishers; 1947; \$3.00; Pages ix, 228. (Reviewed in 33 A.B.A.J. 1195; December, 1947.)

THE AMERICAN PHILOSOPHY OF LAW. By Francis P. LeBuffe and James V. Hayes. Long Island City, New York: Crusader Press; 1947; \$6.00; Pages ix, 418. (Reviewed in 34 A.B.A.J. 297; April, 1948.)

SOME REFLECTIONS ON THE READING OF STATUTES. By Felix Frankfurter. New York: Association of the Bar of the City of New York; 1948; \$1.50. (See page 221 of our March issue.)

CONFESSIONS OF AN UNCOMMON ATTORNEY. By Reginald L. Hine. New York: Macmillan Company; 1947; \$4.00; Pages xix, 268. (Editorial in 34 A.B.A.J. 127; February, 1948; review at page 141, same issue.)

[EDITOR'S NOTE: In the review of *When Does Title Pass?* in these pages in May (34 A.B.A.J. 405), the name of the publisher was inadvertently omitted. The volume may be obtained from the author, Thomas G. Bagan, 1 North La Salle Street, Chicago 2, Illinois.]

Review of Recent Supreme Court Decisions

BANKS AND BANKING

Federal Reserve Act—Conditional Admission to Membership in System—Validity of Condition—Declaratory Judgment

■ *Eccles v. Peoples Bank of Lakewood Village*, 92 L. ed. Adv. Ops. 592; 68 Sup. Ct. Rep. 641; 16 U.S. Law Week 4270. (No. 101, decided March 15, 1948).

The Peoples Bank was admitted to membership in the Federal Reserve System on condition that it would withdraw from membership if a certain holding company or any of its affiliates acquired any interest in the bank other than interests arising out of the usual correspondent bank relationships. The holding company, Transamerica, without knowledge of the Bank, acquired 540 of its 5000 shares of outstanding stock. The bank advised the Federal Reserve governors of this fact and requested to be relieved of the condition. The Board refused the request but, after satisfying itself that Transamerica's holding did not affect the Bank's control, disavowed any intention to invoke the condition merely because of acquisition of an interest by Transamerica with no indication of subversion of independence. Action was then brought by the Bank in the District Court for the District of Columbia for a declaratory judgment pronouncing the condition invalid and enjoining its enforcement. On answer and affidavits the Court gave judgment for the defendants. The Court of Appeals reversed.

On certiorari the Supreme Court reversed the latter judgment. Mr. Justice FRANKFURTER delivered the opinion of the Court.

The opinion expresses the unwillingness of the Court to consider the merits of the controversy on the ground that the public interest would not be served by an adjudication of a question of this character

when the plaintiffs' need for relief is not clear but only remote or speculative. Analogy is drawn to the rule of avoiding adjudication of constitutional questions where a decision of the question is not directly necessary for the protection of the plaintiff's rights.

Mr. Justice REED delivered a dissenting opinion in which Mr. Justice BURTON joined. In this opinion the view is expressed that a justiciable controversy is presented with a claim of right, a present threat to deprive a particular person of the right claimed with irremedial damages following the actual or threatened deprivation of the right claimed.

The CHIEF JUSTICE and Mr. Justice DOUGLAS did not take part in this case.

H.

The case was argued by J. Leonard Townsend for Eccles and Samuel B. Stewart, Jr., for the bank.

COMMERCE

Interstate Commerce—Carrier's Exemption from Liability Under Free Pass

■ *Francis v. Southern Pacific Company*, 92 L. ed. Adv. Ops. 610; 68 Sup. Ct. Rep. 611; 16 U.S. Law Week 4262. (No. 400, decided March 15, 1948).

Petitioners, minor children of a former railroad employee who was killed while riding on a Southern Pacific train, brought suit by their guardian, to recover damages because of the father's death. The action was brought in a federal court, jurisdiction being founded on diversity of citizenship. The basis alleged for recovery was the negligence of the railroad, but the trial judge, in view of a provision in the free pass on which the father was riding, instructed the jury that recovery could be had only if the railroad was guilty of wanton negligence. The error alleged is his refusal to submit the case to the jury

on the basis of ordinary negligence. The pass contained a provision that the user assumed all risk of injury to person or property and absolved the railroad from any liability therefor. Judgment went for the defendant, and the Circuit Court of Appeals affirmed.

This was affirmed by the Supreme Court on certiorari. Mr. Justice DOUGLAS delivered the opinion. The conclusion of the Court rests upon a construction of federal law as expressed in federal statutes and federal decisions. Particular stress is laid on the fact that the relevant federal statutes have been amended from time to time by amendments, including amendments dealing with free transportation, since the construction of the Act sustaining free pass provisions was settled.

Mr. Justice BLACK delivered a dissenting opinion in which Mr. Justice MURPHY and Mr. Justice RUTLEDGE joined. This opinion emphasizes that the question should be controlled by Utah law, and that Congress has not authorized the railroads to contract against liability for their negligence resulting in injury to or death of a railroad employee, or any person legally riding on a pass.

H.

The case was argued by Parnell Black for Francis and Paul H. Ray for Southern Pacific.

Clayton Act—British Corporation "Transacting Business" and "Found" Here Within Section 12 Although Arrangements Center Around Controlled and Partially-Owned American Corporation

■ *United States v. Scophony Corporation of America*, 92 L. ed. Adv. Ops. 763; 68 Sup. Ct. Rep. 855; 16 U.S. Law Week 4335. (No. 41, decided April 26, 1948.)

In an opinion by Mr. Justice RUTLEDGE, the Court held that Scophony, Limited, a British corporation, was "transacting business" and "found" in

Reviews in this issue by James L. Homire, Mark H. Johnson and Richard B. Allen.

the Southern District of New York, within the meaning of those terms as used in the service of process clause of Section 12 of the Clayton Act, where the corporation, after opening an office in New York City, and making efforts to manufacture and sell its television equipment, was seeking to exploit its patents through complex working arrangements, centering around a controlled and partially-owned American corporation, and "partaking practically of the character of a common enterprise with others and requiring supervision and intervention beyond normal exercise of shareholders' rights by the participating companies' representatives *qua* such".

Mr. Justice JACKSON concurred in the result and Mr. Justice FRANKFURTER concurred separately. A.

The case was argued by Sigmund Timberg for the United States and Edwin Foster Blair for Scophony.

CONFLICT OF LAWS

Rules of Decision Act—Application of *Erie v. Tompkins*—Federal Courts Need Not Follow State Court Decision That Would Not Have Been Authoritative Exposition of State Law.

■ *King v. Order of United Commercial Travelers of America*, 92 L. ed. Adv. Ops. 479; 68 Sup. Ct. Rep. 488; 16 U. S. Law Week 4249. (No. 171, decided March 8, 1948).

A federal trial court in South Carolina gave judgment for the plaintiff in an action on an insurance policy for the death of the plaintiff's husband. Commercial Travelers, the insurer, issued the policy sued upon, which insured against accidental death but exempted the insurer from liability for "death resulting from participation . . . in aviation". The insured was in a land-based Civil Air Patrol plane which was forced to land thirty miles off the North Carolina coast. Some hours later the insured died, and the medical diagnosis was "drowning as a result of exposure in the water".

When the case was decided, no South Carolina decision controlling the question had been found, and the District Court fell back on

general principles of insurance law as enunciated by the Supreme Court of South Carolina. Applying these principles, it gave judgment against the insurer. A little later in a South Carolina Common Pleas Court for Spartanburg County the widow recovered judgment against another insurer on a policy containing an almost identical aviation exclusion clause, the judge following and relying in part upon the reasoning of the federal court's decision.

The Court of Appeals reversed the federal District Court, expressing its disbelief that the Supreme Court of South Carolina would have ruled for the plaintiff had her case been before it.

On certiorari the Supreme Court affirmed with an opinion by the CHIEF JUSTICE. This opinion involved an application of the Rules of Decision Act as applied in *Erie v. Tompkins*. In affirming the decision it is emphasized that the federal courts are not required to follow a decision of an unreported common pleas court, which would not have been taken by the state courts as an authoritative exposition of state law, and which the federal court believes would probably not be followed by the Supreme Court of the state. On the other hand, care is taken to point out that it is not to be understood that the federal courts need never abide by determination of state law by state courts.

The case was argued by Harvey W. Johnson and Jesse W. Boyd for King and C. F. Haynsworth, Jr., and E. W. Dillon for Commercial Travelers.

CONSTITUTIONAL LAW

Due Process in Contempt Proceeding—Michigan's One-Man Grand Jury

■ *In re Oliver*, 92 L. ed. Adv. Ops. 491; 68 Sup. Ct. Rep. 499; 16 U. S. Law Week 4240. (No. 215, decided March 8, 1948).

In this case in extensive opinions, the opinion of the Court being delivered by Mr. Justice BLACK with a concurrence by Mr. Justice RUTLEDGE, consideration is given to the Michigan one-man grand jury

system as it operated in a contempt proceeding. Under the statutory procedure in Michigan a circuit judge may act as a one-man grand jury. In the instant case, at a secret session, the judge found Oliver in contempt of court on the ground that he had testified evasively and had given contradictory answers to questions. The judge did not believe the petitioner and sentenced him to sixty days for contempt of court. His disbelief was based partly on the secret testimony of another witness. Oliver's counsel filed a petition for habeas corpus in the Michigan Supreme Court. That Court rejected Oliver's contention that he had been denied due process as guaranteed by the Fourteenth Amendment.

On certiorari the Supreme Court reversed. The opinion of Mr. Justice BLACK condemns the procedure as applied here on two principal grounds. The first is that the secrecy surrounding the proceedings constituted a denial of procedural due process, and the second that Oliver had been denied a fair opportunity to defend himself against the charges.

Mr. Justice RUTLEDGE intimated his dissatisfaction with the holding and results of *Hurtado v. California*, 110 U. S. 516, to the extent that they permit departures from the basic Bill of Rights.

Mr. Justice FRANKFURTER delivered a separate opinion in which he expressed the view that the issues decided in the Supreme Court had not been presented to the Supreme Court of Michigan, and the case should be remanded to that Court to enable it to pass on those issues. He also concurred in a short dissenting opinion delivered by Mr. Justice JACKSON. This opinion emphasized the view that the principal ground for reversal, namely the alleged secrecy of the contempt proceedings, had not been assigned for review in the petition for certiorari or in the habeas corpus proceedings.

H.

The case was argued by William Henry Gallagher and Osmond K. Fraenkel for Oliver and Edmund E. Shepherd for Michigan.

**Contract Clause—Due Process—
New York Abandoned Property Law
—Unclaimed Life Insurance Funds—
Constitutional Validity**

■ *Connecticut Mutual Life Insurance Company v. Moore*, 92 L. ed. Adv. Ops. 641; 68 Sup. Ct. Rep. 682; 16 U.S. Law Week 4289. (No. 337, decided March 29, 1948).

The New York Abandoned Property Law was amended in 1944 to cover insurance companies incorporated out of the state. It provides that moneys held or owing by life insurance companies on policies issued on lives of residents of New York shall be deemed to be abandoned property in three classes of cases. Nine foreign insurance companies brought suit in New York for a declaratory judgment announcing the invalidity of the law as applied to them and for an injunction against its enforcement. The Court of Appeals sustained the law, but construed the statute to leave open to companies all defenses except the statute of limitations, non-compliance with policy provisions calling for proof of death or of other designated contingency and failure to surrender a policy on making a claim.

The objections of the companies to the constitutional validity of the Act were (1) that it impairs the obligation of contract, and (2) that it deprives them of property without due process of law. The argument under the contract clause was that the statute transforms into a liquidated obligation an obligation which was conditional only. Under the due process clause the argument was that New York has no power to sequester funds held by these companies to meet their obligations on policies issued on New York residents for delivery in New York.

Both contentions were rejected in an opinion of the Court delivered by Mr. Justice REED. The more serious contention was the due process argument which is the one as to which the dissents were directed.

Mr. Justice REED states that the question is whether the State of New York has "sufficient contacts with the

transactions" to justify the seizure of abandoned moneys due to New York residents. The exercise of the state's power is sustained with the limitation: "We do not pass upon the validity in instances where the insured persons, after delivery, cease to be residents of New York or where the beneficiary is not a resident of New York at maturity of the policy."

Mr. Justice JACKSON delivered a dissenting opinion in which Mr. Justice DOUGLAS joined. It is emphasized that the possible rights of other states in the funds make it improvident to pass on the validity of the legislation in an action for a declaratory judgment.

Mr. Justice FRANKFURTER also dissented in an opinion "substantially" agreeing with that of Mr. Justice JACKSON and stating that "such a mutilated affirmance . . . with everything else left open, is bound to hatch a brood of future litigation".

H.

The case was argued by Ganson J. Baldwin and Buist Murfee Anderson for the insurance companies and Abe Wagman for New York.

Fourteenth Amendment—Due Process Clause Does Not Require State To Appoint Counsel for Accused in Non-Capital Case

■ *Bute v. Illinois*, 92 L. ed. Adv. Ops. 735; 68 Sup. Ct. Rep. 763; 16 U.S. Law Week 4313. (No. 398, decided April 19, 1948.)

The Supreme Court held in 1942 in *Betts v. Brady*, 316 U.S. 455, that the due process clause of the Fourteenth Amendment does not require that in every non-capital case, whatever the circumstances, one charged with crime who is unable to obtain counsel must be furnished counsel by the state, and thus does not adopt for state procedure the requirements of the Sixth Amendment as to federal procedure.

In the present case the common law record showed that the 57-year-old defendant pleaded guilty to two indictments charging him with taking indecent liberties with children under the age of fifteen and that he was sentenced on each indictment

to one to twenty year terms of imprisonment. The record was silent whether inquiry was made as to his desire for counsel or his inability to procure counsel. Petitioner contended that under this circumstance his sentence was imposed in violation of the due process clause of the Fourteenth Amendment. The Supreme Court of Illinois affirmed both sentences.

In an opinion by Mr. Justice BURTON the Supreme Court affirmed the sentences and reaffirmed the doctrine of *Betts v. Brady* that the due process clause of the Fourteenth Amendment does not incorporate into itself as a standard for state procedure the requirement as to appointment of counsel in the Sixth Amendment. Mr. Justice BURTON makes an extensive examination of the various state practices regarding appointment of counsel, in both capital and non-capital criminal cases. He concludes that the due process clause, neither from the standpoint of historic setting nor present-day analysis, imposes upon the states the practice which the Sixth Amendment makes mandatory for federal courts. The only requirement is that the state action "shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions . . ." (quoting from *Hebert v. Louisiana*, 272 U.S. 312, at 316). And to the majority the record in this case showed such a consistency.

Squarely dissenting, Mr. Justice DOUGLAS, joined by Mr. Justice BLACK, Mr. Justice MURPHY and Mr. Justice RUTLEDGE, declares that the constitutional guaranty of a fair trial is valueless unless an accused has counsel. He further states his position that the due process clause of the Fourteenth Amendment makes applicable to the courts of the states all of the Bill of Rights. But even if this position were not accepted, he contends, appointment of counsel for the petitioner in this case would be required by the "natural, inherent and fundamental principles of fairness" test of the *Betts* case.

A.

The case was argued by Victor Brudney for Bute and William C. Wines for Illinois.

CRIMES

Due Process—Conviction for Violation of a Criminal Statute Not Charged in Information

■ *Cole v. Arkansas*, 92 L. ed. Adv. Ops. 429; 68 Sup. Ct. Rep. 514; 16 U.S. Law Week 4215. (No. 373, decided March 8, 1948).

Under an Arkansas Statute of 1943, Sections 1 and 2 created two separate and distinct offenses. Section 2 makes it an offense for a person in concert with others, where a labor dispute exists, to promote an assemblage which by force or violence prevents any person from engaging in a lawful vocation. Section 1 makes it unlawful for any person by force to prevent any person from engaging in any lawful vocation.

Cole was charged with violation of Section 2, and the instructions to the jury were also directed to the same offense. Conviction followed and on appeal the State Supreme Court affirmed the conviction, but on the ground that a violation of Section 1 had been proved. That court said that it affirmed without invoking any part of Section 2.

On certiorari the judgment was reversed. Mr. Justice BLACK delivered the opinion of the Court. He emphasizes that no principle of procedural due process is more clearly established than that notice of the specific charge and a chance to be heard in a trial of the issues raised thereby are among the constitutional rights of all persons accused in criminal proceedings—state or federal.

H.

The case was argued by David Rein and Joseph Forer for Cole and Oscar E. Ellis and Shields M. Goodwin for Arkansas.

Sentence—For Valid Federal Conviction of Murder in First Degree Jurors Must Be Unanimous on Question of Punishment as Well as Guilt

■ *Andres v. United States*, 92 L. ed. Adv. Ops. 790; 68 Sup. Ct. Rep. 880; 16 U.S. Law Week 4350. (No. 431, decided April 26, 1948.)

As to criminal cases in federal

courts, 18 USC §454 requires that a defendant guilty of murder in the first degree "shall suffer death . . .". Section 567 of the same title, however, provides that "in all cases where the accused is found guilty of the crime of murder in the first degree . . . the jury may qualify their verdict by adding thereto 'without capital punishment'", in which case the sentence is to life imprisonment. In this case the Government contended that these statutes, correctly interpreted, would require the jury first to decide unanimously the guilt of the accused and then to decide with the same unanimity to return a qualified verdict. Thus if not all twelve jurors agree to add "without capital punishment", Section 454 would require the death sentence. On the other hand, petitioner argued that unanimity was required in respect to both guilt and punishment before a verdict could be returned. Thus one juror could prevent a verdict of death, although the jury had unanimously found an accused guilty of murder.

Petitioner was convicted of murder in the United States District Court for the Territory of Hawaii. The jury did not add the qualifying words to its verdict, and the court sentenced accused to death by hanging. On appeal, the Circuit Court of Appeals for the Ninth Circuit held that petitioner's construction of the statute was correct, but found that the trial judge's instructions properly informed the jury of this construction, and affirmed the trial court.

In an opinion by Mr. Justice REED, the Court, while conceding that the Government's position could be supported by a logical reading of the two sections, agreed with the construction urged by petitioner as being "more consonant with the general humanitarian purpose of the statute and the history of the Anglo-American jury system . . .". The Court found, however, that the instructions of the trial judge did not adequately set forth this interpretation and did not thus fully protect petitioner, and therefore reversed

and remanded the case for a new trial.

Mr. Justice FRANKFURTER, concurring separately and joined by Mr. Justice BURTON, placed in his opinion a survey of state statutes on the problem involved and concluded that the Court's construction of the federal provisions was in accord with states' construction of similar provisions in state law.

A.

The case was argued by Oliver P. Soares for Andres and Vincent A. Kleinfeld for the United States.

FEDERAL EMPLOYERS' LIABILITY ACT

Liability for Delay in Aiding Injured Employee

■ *Anderson v. Atchison, Topeka and Santa Fe Railway Company*, 92 L. ed. Adv. Ops. 840; 68 Sup. Ct. Rep. 854; 16 U.S. Law Week 4375. (No. 620, decided April 26, 1948.)

An administratrix filed a complaint under the Federal Employers' Liability Act stating facts to the effect that deceased, an employee of the Santa Fe, fell from a train while performing his duties and was injured so that he could not secure help, and that, although his absence from the train was soon discovered, unreasonably and negligently delayed efforts were made to locate him, so that as a result he died of exposure three days after he was found. A California state trial court, affirmed by the California Supreme Court, held the allegations, even if true, insufficient to support a judgment.

In a *per curiam* opinion the Court reversed and remanded, stating its inability to conclude with the state courts that the evidence which might be presented under the allegations would have revealed a situation in which plaintiff could not have recovered.

A.

The case was argued by Clifton Hildebrand for Anderson and Frank B. Belcher for the Santa Fe.

INDIANS

Suits to Determine Heirship—United States as Party

■ *Shade v. Downing*, 92 L. ed. Adv. Ops. 693; 68 Sup. Ct. Rep. 702; 16 U.S. Law Week 4310. (No. 448, decided April 5, 1948.)

In a suit to determine the heirship of a deceased full-blooded Cherokee, the Circuit Court of Appeals for the Tenth Circuit certified the following question to the Supreme Court:

(1) Is the United States a necessary party to a proceeding to determine the heirship of a deceased citizen allottee of the Five Civilized Tribes brought under the Act of June 19, 1918, 40 Stat. 606?

The question was pertinent to the determination of whether prior proceedings in a state court, which had decreed that the deceased's three daughters were his sole heirs, were open to attack by the only heir of his second wife, because the United States had not been made a party therein.

In an opinion by Mr. Justice DOUGLAS, the question is answered "No". A distinction is drawn between heirship cases and partition suits. In the latter the interests of the United States are thought to be sufficient to require that the United States be made a party, even absent a statutory requirement to that effect.

Mr. Justice REED, Mr. Justice FRANKFURTER and Mr. Justice JACKSON were of the opinion that the question should be answered in the affirmative. H.

The case was argued by Kelly Brown for Shade and Forrester Brewster for Downing.

POST OFFICE

Validity of Order of Postmaster General Excluding Publication Found To Be Fraudulent

■ *Donaldson v. Read Magazine*, 92 L. ed. Adv. Ops. 440; 68 Sup. Ct. Rep. 591; 16 U. S. Law Week 4219. (No. 50, decided March 8, 1948).

The respondents, publishers of magazines, challenged the validity of an order of the Postmaster General which directed that mail addressed to some of them be returned to the senders marked "Fraudulent", and that money orders payable to them be returned to the senders. The order was based upon findings of the Postmaster General, made after hearing, that the respondents had advertised a project to promote the

sale of their books, which project was found to be fraudulent. After a preliminary controversy as to the scope of the Postmaster General's order, its scope was reduced to barring delivery of mail and payment of money orders to one magazine and one contest editor.

The chief questions were whether the order was supported by substantial evidence and whether the statutes supporting the order were unconstitutional.

On the first question the Court, in an opinion by Mr. Justice BLACK, reviewed the evidence and found that while a close reading of fine print contained in the advertisements disclosed the real nature of the scheme, on the whole it was misleading and fraudulent to contestants. It was found that the advertisements had been deliberately contrived to divert the reader's attention from material but adroitly obscured facts. It was held that this finding was substantially supported by the facts, and that the lower courts were wrong in holding to the contrary.

The constitutional objections to the order were founded on the First Amendment as prohibiting prior censorship, on the Fourth Amendment against unreasonable searches and seizures, on the due process clause of the Fifth Amendment, on the denial of the kind of trial guaranteed by the Sixth Amendment, Article III, Section 2, Clause 3, and on the Eighth Amendment prohibiting the inflicting of unusual punishments. All of these objections were overruled.

Mr. Justice BURTON delivered a dissenting opinion in which Mr. Justice DOUGLAS concurred. The dissent is based chiefly upon the ground that the advertisements in question fully disclosed the true nature of the scheme. H.

The case was argued by Robert L. Stern for the Postmaster General and John W. Burke, Jr., for Read Magazine.

TAXATION

Federal Income Tax—Family Assignments—Royalty Contract Controlled

by Assignor—Res Judicata and Collateral Estoppel

■ *Commissioner of Internal Revenue v. Sunnen*, 92 L. ed. Adv. Ops. 673, 68 Sup. Ct. Rep. 715; 16 U. S. Law Week 4301. (No. 227, decided April 5, 1948).

The taxpayer owned certain patents which he licensed to a corporation controlled by him. The licenses were non-exclusive, and were to run for ten years except that either party could cancel upon six months' or one year's notice. The corporation agreed to pay a royalty equal to 10 per cent of the gross sales price of the patented devices, with no minimum specified. The taxpayer assigned to his wife, by gift, all of his rights in the license contracts. The royalties thereunder were reported by the wife as her income. The Commissioner asserted that they were income to the taxpayer. The Tax Court sustained the Commissioner except as to one of the assignments hereinafter referred to, but the Eighth Circuit Court of Appeals reversed and sustained the Commissioner as to none of the assignments. The decision was reversed and the Commissioner sustained as to all the assignments in an opinion by Mr. Justice MURPHY.

The taxpayer's argument was that the income was derived from the assigned contract right, rather than from the retained patent right. The opinion states that it is not necessary to meet that contention, because the taxpayer retained sufficient "power and control" over the contract right itself to justify imposition of the tax upon him. Reliance is placed upon (1) the taxpayer's power to cause the corporation to cancel the contracts, (2) his power to regulate the amount of royalties by controlling the amount of production, (3) his power to grant licenses to other manufacturers, and (4) the indirect benefit which he derived from having the royalties paid to a member of his immediate family.

The case presented a collateral procedural issue of considerable importance. The present litigation involved the taxable years 1937-1941.

The same issue had been before the Tax Court for the years 1929-1931, involving one of the assignments concerned in the present case. In the earlier case, decided in 1935, the Tax Court (then Board of Tax Appeals) held for the taxpayer. In the present case the Tax Court also held for the taxpayer with respect to the income derived from that contract, applying the doctrine of *res judicata*. It refused to apply that doctrine, however, with respect to income from identical contracts which were not present in the earlier litigation.

The Supreme Court held that not even the litigated contract was controlled by the earlier decision. The opinion points out first that the strict principle of "*res judicata*" applies only to litigation involving the same tax. If the second case involves a later taxable year, the principle is merely "collateral estoppel". Where the latter doctrine is invoked, an intervening change in legal principle is sufficient to warrant a different result in the later case. The opinion acknowledges that the general principles of income assignment had been established by 1935, but that subsequent Supreme Court decisions in the *Clifford*, *Horst*, *Eubank*, and *Tower* cases constituted "a sufficient change in the legal climate" to render inapplicable the doctrine of collateral estoppel in the present case. (It may be noted that this opinion is the most nearly explicit admission that the Court was making "new law" in those cases.) As to the subsequent contracts, the opinion states that collateral estoppel is not even in issue, because these very contracts had not been the subject of litigation; where the facts in the later case are merely "similar" or "identical", the only valid reliance upon precedent is under the principle of *stare decisis*.

Mr. Justice FRANKFURTER and Mr. Justice JACKSON contended that the decision of the Tax Court should be affirmed under the *Dobson* principle.

J.

The case was argued by Arnold Raum for the Commissioner and C. Powell Fordyce for Sunnen.

Federal Income Tax and Excess Profits Tax—Earnings or Profits—Installment Method—Effect of Regulations

■ *Commissioner of Internal Revenue v. South Texas Lumber Company*, 92 L. ed. Adv. Ops. 631; 68 Sup. Ct. Rep. 695; 16 U. S. Law Week 4296. (No. 348, decided March 29, 1948.)

One factor in determining the excess profits credit under the repealed excess profits tax was the "accumulated earnings and profits as of the beginning of the taxable year". The concept of "earnings and profits" is important in the current income tax law because it is a measure of dividend income to stockholders. In the present case, the taxpayer contended that, for excess profits credit purposes, its earnings and profits included income on installment sales which had been deferred beyond the taxable year under the installment method of accounting. The Treasury regulations to the contrary were sustained by the Tax Court, but the Fifth Circuit Court of Appeals reversed. The Supreme Court, in an opinion by Mr. Justice BLACK, held against the taxpayer.

The opinion relies primarily upon the principle that earnings and profits are to be determined on the same accounting method which the taxpayer employs for computing income. The opinion stresses also that the Commissioner was given "broad rule-making power" under the statute granting the election to use the installment method of accounting, and that the Treasury regulations should not be overruled by the courts "unless clearly contrary to the will of Congress".

It is interesting to note that the opinion distinguishes, without approval or disapproval, the contrary result in *Kimbell's Home Furnishings, Inc. v. Commissioner*, 159 F. (2d) 608, where the taxpayer had elected to accrue installment income for excess profits tax purposes under IRC §736.

Mr. Justice DOUGLAS and Mr. Justice BURTON dissented without opinion.

J.

The case was argued by Lee A. Jackson for the Commissioner and Charles C. MacLean, Jr., for South Texas.

TRIAL

Venue—Federal Courts—Residence of Corporate Defendant

■ *Suttle v. Reich Brothers Construction Company*, 92 L. ed. Adv. Ops. 507; 68 Sup. Ct. Rep. 587; 16 U. S. Law Week 4252. (No. 214, decided March 8, 1948).

Suit was brought in the District Court for the Eastern District of Louisiana against Highway Insurance Underwriters, a Texas corporation, and a partnership and its individual members. All of the individual defendants were residents of the Western District of Louisiana. The corporate defendant was concededly amenable to suit in either district and Section 52 of the Judicial Code provides, "If there are two or more defendants residing in different districts of the State", suit may be brought "in either district". The Texas corporation had qualified to do business in Louisiana. The individual defendants moved to dismiss on the ground of improper venue. The motion was granted as to the individual defendants, and the suit was allowed to stand against the Texas corporation. The Circuit Court of Appeals affirmed.

On certiorari the Supreme Court affirmed, with the CHIEF JUSTICE delivering the opinion. The critical question was whether the Texas corporation was to be regarded as a resident of the Eastern District of Louisiana within the meaning of Section 52 of the Judicial Code, because, if it was, the individual defendants could be properly sued there as co-defendants notwithstanding their residence in the Western District. The Court concludes that the corporation was not a resident of the Eastern District in such a sense as to satisfy the requirements of Section 52.

H.

The case was argued by Charles F. Engle and John D. Miller for Suttle and George T. Owen, Jr., for Reich Brothers.

Courts, Departments and Agencies

E. J. Dimock . . EDITOR-IN-CHARGE

Administrative Law. . . judicial review. . . National Mediation Board's order certifying bargaining representatives is not subject to judicial review under Supreme Court's finding of intent in Railway Labor Act to withhold judicial review.

■ *Kirkland v. Atlantic Coast Line Railroad Co.*, U. S. Ct. App., D. C., April 19, 1948, *per curiam*.

The Court affirmed the District Court's dismissal for lack of jurisdiction of appellant's complaint asking that a certification, by appellee National Mediation Board, of a bargaining representative be declared null and void. In 1943 the Supreme Court had interpreted the Railway Labor Act as clearly evidencing Congressional intent to "withhold" judicial review of certifications of bargaining representatives. This situation was held to be unchanged by § 10 of the 1946 Administrative Procedure Act, which subjects every final agency action to judicial review at the behest of any person whose legal rights were adversely affected unless the action was taken under a statute "precluding" judicial review, or unless the agency action was by law committed to agency discretion. The Court said that the reports of both Senate and House Judiciary Committees indicated that when statutes "withhold" judicial review they "preclude" it. The fact that the House report also said "The mere failure to provide specially by statute for judicial re-

EDITOR'S NOTE: The omission of a citation to United States Law Week or to the appropriate official or unofficial reports in any instance does not mean that the subject matter has not been digested or reported in those publications.

view is certainly no evidence of intent to withhold review" was held to be immaterial since the Act, as interpreted by the Supreme Court, upon its face gave clear and convincing evidence of intent to withhold judicial review.

Appeal. . . death of attorney after appeal is taken from federal district court's order striking his name from court's roll of attorneys renders the action moot.

■ *Howard v. Wilbur*, C.C.A. 6th, March 15, 1948, Miller, C. J. (Digested in 16 U. S. Law Week 2487, April 13, 1948.)

Appellant, formerly the Commonwealth Attorney for the 16th Judicial District in Kentucky, appealed from a district court order striking his name from the roll of attorneys of that court (see 33 A.B.A.J. 615; June, 1947). Upon appellant's death after completion of the appeal, appellees filed a motion reciting his death and moved for an order dismissing the appeal upon the ground that it had become moot. In addition to objecting to the motion filed on behalf of the deceased appellant, his executrix asked to be made a party to the action and that it be revived and proceed in her name.

The Court held that no ruling could be made on the merits since appellant's death rendered the action moot. The Court stated that the only question presented by the appeal had become moot upon appellant's death and thus rendered it impossible for the Court to grant any effectual relief even if it should disagree with the ruling below. The appeal was said not to be within any of the exceptions to the general rule, inasmuch as it was not a case

where the judgment would preclude a party from establishing facts vital to his rights in other proceedings, nor was there a matter of public interest involved. Accordingly, the judgment below was reversed and the case remanded with directions to dismiss the complaint without costs to either party.

Appeal. . . matters appealable. . . while if Portal-to-Portal Act is unconstitutional District Court was without jurisdiction to require trial of defenses based thereon and while interlocutory order is usually appealable where made without jurisdiction, Circuit Court of Appeals declines to entertain appeal from order requiring trial of defenses in advance of such trial.

■ *Larsen v. Wright & Cobb Lighterage Co.*, C.C.A. 2d, March 30, 1948, L. Hand, C.J.

The Portal-to-Portal Act, 29 USC § §251-262, became effective after argument of an appeal from, but before decision affirming, judgment for back pay due plaintiff employees. The mandate directed the trial court to give consideration to the effect of the Portal-to-Portal Act on the actions. Acting under the mandate, the trial court permitted defendants to file supplemental answers setting up defenses under the Act, denied plaintiff's motions to strike the supplemental answers, and refused to issue execution on the earlier judgments. Appeal from these orders was dismissed.

The Court held itself without jurisdiction over the appeal since the rulings were not final. The only theory apparent to the Court under which it would have had jurisdiction to entertain the appeal was that the trial court was without jurisdiction to enter the rulings because the Act

was unconstitutional. However, in accordance with the rule that a court should not pass on the constitutionality of a statute unless such adjudication is unavoidable, the Court ruled that it should not consider the constitutionality of the Act until defendants had established their defenses under the terms of the Act, since "if they fail to do so, the question will never arise".

Frank, C.J., dissented on the ground that it was better to pass on the constitutionality of the statute now than to put the litigants to a possibly useless trial which would bring out no facts which would aid in determining the question of validity.

Civil Rights. . mistreatment of prisoner by warden of state prison constitutes denial of federal right under Civil Rights Act. . no such cause of action against prison physician where not charged with neglect as officer of state.

■ *Gordon v. Garrison et al.*, U.S.D.C., E. D. Ill., April 1, 1948, Lindley, J. (Digested in 16 U.S. Law Week 2512, April 27, 1948).

Plaintiff, a state prison inmate, was injured in an attempted prison break, and was thereafter placed in solitary confinement on a scanty diet. His complaints in the instant actions, brought against the prison warden and the prison physician, alleged that confinement under unhealthy conditions, deprivation of food and denial of medical care resulted in permanent injuries of a serious nature. The defendants moved to dismiss.

The Court denied the motion to dismiss as to defendant warden, since the complaint alleged actions which constituted a deprivation of federal rights "under color of . . . statute" within the meaning of the Civil Rights Act, 8 USC § 43, saying that the essence of plaintiff's claim was that the respondent warden "failed to secure to plaintiff, to be immune in his person from injury, while in custody of said respondent".

The motion to dismiss was sustained, as to the action against the

physician, on the grounds that the suit was based on neglect in his individual capacity and not as an officer of the state so that it could not be based on the Civil Rights Act, and that the complaint did not aver any obligation on the part of the physician to attend plaintiff.

Commerce. . air commerce . . Congressional power over air commerce same as over water commerce . . Federal Recording Act effective though aircraft intended for intrastate transportation only.

■ *In re Veterans' Air Express Co., Inc.*, U.S.D.C., N. J., March 19, 1948, Meaney, D. J. (Digested in 16 U. S. Law Week 2474, April 6, 1948.)

Matson Navigation Company, asserting charges for overhaul and renovation, petitioned to impress a paramount lien on two four-engined aircraft owned by Veterans' Air Express, a debtor undergoing Chapter X reorganization. The aircraft had been purchased by Veterans' from the United States, and were subject to purchase money chattel mortgages in favor of the seller, duly recorded pursuant to the Civil Aeronautics Act (49 USC § 401, *et seq.*).

The Court, after analysis of the Civil Aeronautics Act and regulations promulgated thereunder, held that all persons were charged with notice of liens recorded pursuant thereto and that the recorded liens were senior to the petitioner's. The claim that the aircraft might not be intended for interstate flights and that therefore federal laws were not applicable, was answered by the holding, by analogy to the water navigation cases, that control of aircraft and air navigation was resident in Congress under the commerce clause despite the fact that in many instances such aircraft might be used solely for operations within the confines of a single state. The Court said: "If the waters afford channels of communication among the states or for commerce with foreign countries, they are ipso facto subject to the constitutionally grounded power for the governing precepts of Congress", and added: "There can be no

air pocket so closed and confined within the geographical limits of any state as to be inconspicuous to the interstate and international highway of the air".

The Court adverted to, but did not follow *Aviation Credit Corp. v. Gardner*, 174 Misc. 798, which indicated that state control over commercial aircraft engaged in purely intrastate operations was paramount.

Elections. . presidential electors . . Alabama statute binding presidential electors to vote for the nominee of the national convention of the party by which they were elected unconstitutional.

■ *Advisory Opinion to the Governor of Alabama*, Ala. Supreme Ct., Spring Term, 1948, *per curiam*.

In 1945, the Alabama legislature amended §226 of Title 17 of the Alabama Code (1940) so as to require presidential electors to "cast their ballots for the nominee of the national convention of the party by which they were elected" (Act No. 386, S. 46, Gen. Acts 1945). The Supreme Court of Alabama, in an advisory opinion to the governor, held the above enactment in contravention of the United States Constitution. In the Court's opinion, under the Constitution, Art. II, §1, and the Twelfth Amendment, "the elector is a constitutional officer and the words used in the original constitution and the amendment thereof show that he is to follow his own judgment and discretion". Hence it was said that a statute could not constitutionally deprive him of discretion in casting his electoral ballot, the power of the state legislature being exhausted in providing for the appointment of electors. "If and when it (the legislature) attempts to go further and dictate to the electors the choice which they must make for president and vice president, it has invaded the field set apart to the electors by the Constitution of the United States, and such action cannot stand."

Husband and Wife. . torts . . annulment does not so completely erase marriage as to permit action between

spouses for tort committed during its existence.

■ *Callow v. Thomas*, Mass. Supreme Judicial Court, April 1, 1948, Spalding, J. (Digested in 16 U. S. Law Week 2518, April 27, 1948.)

Plaintiff and defendant were respectively wife and husband at the time of an automobile accident in which plaintiff was injured due to defendant's negligence. Thereafter plaintiff obtained annulment of the marriage and sued for damages for injuries sustained in the accident. The facts and amount of damages being stipulated, the sole question presented was whether the former wife could, after annulment, maintain an action against her former husband for a tort committed during coverture.

The Court, describing the case as one of first impression, noted that after divorce no action could be maintained by either spouse for a tort committed by the other during coverture, but found this rule not decisive since annulment effaced the marriage *ab initio*, so that legally the marital relationship never existed. The Court, however, cited the cases holding that "such transactions as have been concluded and such things as have been done during the period of the supposed marriage" are exceptions to the complete erasure of annulment. The Court held that the case fell within this rule and declined to press to the point urged by plaintiff the "legal fiction" that annulment voids the marriage *ab initio*. "To say that for all purposes the marriage never existed is unrealistic."

Labor Law . . . injunctions . . . union and its president held guilty of criminal contempt in disobeying temporary restraining order that strike cease pending outcome of injunction proceedings . . . union functioning as union responsible for mass action of members . . . fact that union did not use word "strike" not determinative.

■ *United States v. International Union, United Mine Workers of America*, U.S.D.C., D.C., April 19, 1948, Goldsborough, J.

On April 3, 1948, the District Court issued a preliminary restraining order directed to the United Mine Workers of America ordering that a strike in the bituminous coal mines cease until the merits of the controversy over miners' pensions could be decided in an injunction proceeding filed against the union under the Taft-Hartley Act by the Attorney General. In answer to the government's petition that the United Mine Workers be held in contempt for disobeying the restraining order, the union contended that the order's issuance violated the First, Fifth and the Thirteenth Amendments of the Constitution. The Court interpreted the union's position as to the Fifth Amendment as a claim that the order was really a mandatory injunction and that therefore due process required a hearing. This was answered by the holding that the order merely required a return to the status quo. The union's position as to the First and Thirteenth Amendments was interpreted to be that what would have been legal if there had been a strike was unconstitutional here because there was no strike and the miners left the mines entirely of their own volition without any direct or indirect instructions from their union president.

The Court held the United Mine Workers and its president guilty of criminal contempt of court for disobeying its temporary restraining order, and found from the evidence that a strike was called and that the miners had not as mere individuals decided to cease working. The Court announced what it believed to be a novel principle that as long as a union is functioning as a union it must be held responsible for the mass action of its members. In addition, the miners' walk-out when told "The agreement is dishonored", and their return when told "The agreement is honored" was said to indicate the use of a code and a new method by the union of endeavoring to avoid responsibility. It was the Court's opinion that "if a wink or a code was used in place of the word

strike, there was just as much a strike called as if the word strike had been used".

[Sentence for criminal contempt was subsequently imposed, following recommendations of the government, fining the union \$1,400,000 and fining its president, John L. Lewis, \$20,000.]

On April 23, 1948, the Court postponed indefinitely consideration of punishment of the union and its president for civil contempt of court.

The restraining order would have expired on April 23, 1948, by its terms as extended. On April 21, 1948, the Court issued a preliminary injunction to remain in force until final hearing and further order of the Court.]

Labor Law . . . pension plans subject to collective bargaining if employees' union so requests . . . employer forbidden by NLRB to make changes without consultation with union.

■ *In re Inland Steel Co.*, Case No. 13-C-2836, NLRB, April 13, 1948.

Respondent steel company, prior to selection of a statutory employees' bargaining unit in 1941, established a pension plan. In 1945 and 1946 the company amended the terms of the plan and adopted a program of compulsory retirement of employees at the age of sixty-five. The National Labor Relations Board adopted the Trial Examiner's finding that the company, by amending the pension plan, had changed the employees' "wages" and "conditions of employment", and, by refusing to bargain the matter with the employees' union, had committed an unfair labor practice within the purview of the National Labor Relations Act.

The majority of the Board maintained that "wages", as used in the Act, included "emoluments of value, like pension and insurance benefits, which may accrue to employees out of their employment relationship". Support for this definition was found in the meaning given "wages" under the Social Security Act, the Internal Revenue Code, and the Bankruptcy Act. The majority also

held that the compulsory retirement feature of the program constituted a change in "conditions of employment", and stated that pension plans were a common subject of collective bargaining, although the issue of compulsory bargaining on pensions had never before been presented to the Board.

The Board found it necessary to require the company "to refrain from making any unilateral changes with respect to its pension and retirement policies" affecting represented employees "without prior consultation with the union".

Member Gray, dissenting, argued that pension plans were a management function, requiring the application of actuarial knowledge and not fit subjects for collective bargaining, and that Congress had not intended to require employers to bargain collectively on such retirement plans.

Radio Communication . . . Sherman Act . . . unaffiliated broadcasting station which had program agreements with two networks permitting it to fix its own advertising rates is not entitled to preliminary injunction preventing networks from cancelling their agreements and exclusively affiliating with two newly licensed stations.

■ *Federal Broadcasting System, Inc., v. American Broadcasting Co., Inc., and Mutual Broadcasting System, Inc.*, C.C.A. 2d, April 8, 1948, L. Hand, C. J.

Plaintiff owner of unaffiliated radio broadcasting station WSAY at Rochester, New York, sought treble damages and a permanent injunction under the Sherman Act against the four chain broadcasting networks, charging that by concerted action their series of mutually exclusive contracts had the purpose and effect of excluding station WSAY from the network advertising market. Refusing to enter into affiliation contracts with the networks, station WSAY had secured terminable non-affiliate agreements with American and Mutual which, unlike the affiliation contracts, permitted plaintiff to fix the price to be

charged advertisers for the use of its facilities. In May and June of 1947, American and Mutual entered into exclusive affiliation agreements with two newly licensed Rochester stations and cancelled their arrangements with plaintiff. The lower court denied plaintiff's motion for a preliminary injunction preventing the two networks from withdrawing their programs from plaintiff's station. The order was affirmed on appeal.

The Court said that there was an absence of persuasive evidence of a conspiracy unlawfully to exclude plaintiff from obtaining defendants' programs. It declared that a network was not a common carrier and plaintiff had no inherent right to set its own rate to an advertiser and in all other respects to use the facilities of the radio network. Each network had the right in the absence of concerted action to make such contracts for the distribution of its programs as it chose. The fact that the two networks gave notice of termination on the same day was said to be an insufficient basis for charging concerted action when time was of the essence in their competition. The Court thought it improper to grant a preliminary injunction upon the charge that the networks had unlawful "exclusive" contracts with their stations where the Federal Communications Commission had specifically sanctioned many important terms of the contracts.

Shipping . . . Suits in Admiralty Act . . . subcontractor's employee injured cleaning tanks of U. S. steamer moored in N. Y. is entitled to recovery for negligence under N. Y. law, rather than for breach of duty to make ship seaworthy . . . finding of negligence in permitting grease patch to stay on deck insufficient as finding of fact in absence of finding as to length of stay.

■ *Guerrini v. United States*, C.C.A. 2d, March 31, 1948, L. Hand, C. J.

Libellant, employed by a subcontractor cleaning the tanks of a United States-owned steamship moored at a Brooklyn dock, slipped on a patch of grease on the deck and fell into

the hold while lowering a bale of cleaning rags. The government appealed from, and procured reversal of, a decree awarding libellant damages in an action brought under the Suits in Admiralty Act.

The Court declined to extend to all workmen the doctrine of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, that the ship-owner had an implied duty to a stevedore to make the ship seaworthy, and followed *Puleo v. Moss*, 159 F. (2d) 842, and deemed libellant a "business guest" as to whom the shipowner's liability depended on the law of New York, the ship being moored in that jurisdiction. The New York cases did not, in the Court's opinion, distinguish the measure of care due a "business guest" from that due an employee. The New York cases were said to be ambiguous as to whether the duty to a "guest" was to use reasonable care for his safety regardless of the openness of the danger or was limited to pointing out the dangers, a question of moment under the admiralty rule that where the shipowner owes a positive duty to provide a safe place, the "guest's" contributory negligence does not bar recovery, but only goes in mitigation of damages. The Court held that the New York law imposed a positive duty to provide a safe place and ruled that, if on remand the shipowner's negligence with respect to the grease was established, the damages should be reduced to one-fourth the amount originally allowed, since libellant's negligence in lowering the rags from a slippery spot made "the faults . . . in the proportion of one to four".

The lower court's finding that the shipowner had been negligent in allowing the patch of grease to remain upon the deck was held not to be a finding of fact, and the cause was sent back for a specific finding on the issue as to how long the grease had been there.

Statutes . . . severability . . . de facto officers . . . severability clause leaves as valid creation of new chancery court though legislative appointment of chancellor unconstitutional . . . judi-

cial acts valid since appointee de facto chancellor.

■ *Pope v. Pope*, Ark. Supreme Ct., April 19, 1948, Smith, J.

A 1947 statute created the Second Division of the Pulaski Chancery Court and named "the present Master in Chancery of the Chancery Court of Pulaski County" (Ruth Hale, see 34 A.B.A.J. 224; March, 1948) Chancellor of the newly created division to serve until the next regular election. On January 12, 1948, the Arkansas Supreme Court, acting on an appeal from a divorce decree granted by the designated Chancellor, held by a divided court that the Chancellor's "appointment" was void since the governor alone had the power under the state constitution to fill vacancies in state office pending election. The Court cited *Keith v. State*, 49 Ark. 439, to the effect that there could be no de facto judge without a de jure office. It said, in spite of a severability clause, that here the legislature would not have created the office had it realized that the appointment was a nullity and hence held that there was no de jure office. As a result, all judgments, orders and decrees granted by the Chancellor would be void.

The instant case presented the same question and Justice Smith changed his vote with the effect of holding the acts of the legislature-appointed Chancellor valid. He began by saying "My vote was required, and was cast, to make the opinion in the cases of *Howell v. Howell*, and *Stevens v. Stevens*, Ms. Op. 208 S. W. (2d) 22, and I assume my full share of responsibility for the opinion in those cases, but having reached the conclusion that it is unsound, I am now voting to overrule it." Pointing out that §12 of Act 42, the one in question, provided that the invalidity of any section or sections of the Act should not affect the validity of the balance of said Act, he declared: "In view of this definite statement of the legislative intent, I have concluded that we have no power to say that the Legislature did not mean what it said.

Numerous acts have been passed containing provisions similar to §12 of Act 42, and these acts have been upheld, after eliminating any unconstitutional part of the act, provided the part which remained after striking down the unconstitutional portions thereof left a workable act."

United States . . . Federal Tort Claims Act . . . defense of statute of limitations need not be pleaded but may be raised by defendant's motion to dismiss.

■ *Sikes v. U. S.*, U.S.D.C., E. Pa., March 10, 1948, Bard, D. J. (Digested in 16 U. S. Law Week 2491, April 13, 1948).

In a personal injury action against the United States based on the Federal Tort Claims Act, the Court held that the defense that the action was not brought within the time fixed by §420 of the Act was properly raised by defendant's motion to dismiss since a cause of action created by a statute which makes the bringing of a suit within a specified time a condition precedent to the existence of the cause of action itself is an exception to the general rule that a party must plead the statute of limitations in order to avail himself of it. The Court cited *Kraushaar v. Leschin*, 4 F.R.D. 143, to the effect that "the distinction is between a substantive right and a procedural requirement".

War . . . veterans' housing . . . Wisconsin statute authorizing use of public funds for reimbursement of veterans housing authority contravenes constitutional prohibition against expenditure for internal improvement.

■ *State of Wisconsin ex rel. Martin v. Giessel*, Wis. Supreme Ct., March 29, 1948, Hughes, J. (Digested in 16 U. S. Law Week 2492, April 13, 1948).

The case was an action for a writ of mandamus to compel the director of the Wisconsin Department of Budgets and Accounts to approve an allocation of \$1000 made by the Wisconsin Veterans Housing Authority to a local housing authority pursuant to §20.02 (13) (a), Wis. Stats. 1947, which authorized the use of funds from certain taxes to reimburse local veterans housing authorities for ten

per cent of the cost of housing projects. The petition was denied, the Court sustaining the contention of respondent that the statute contravened the Wisconsin Constitution, Art. VIII, §10, which reads in part: "The state shall never contract any debt for works of internal improvement, or be a party, in carrying on such works . . .".

The Court stated that an expenditure of public funds for a private purpose would be unconstitutional and that, therefore, the housing contemplated must, if the State were to enter the field, be a public venture. If it was a public venture, the Court reasoned, it would constitute an "internal improvement". The Court declined to deem the present emergency, the police power, or analogy to State construction of housing for State university students or inmates of charitable institutions proper basis for upholding the legislation.

[See also *Opinion of the Justices to the House of Representatives*, Mass. Supreme Jud. Ct., March 23, 1948 (digested in 16 U. S. Law Week 2518, April 27, 1948), which held that the making of annual contributions to veterans' housing projects as authorized by contemplated legislation would be valid since it would involve the expenditure by the State of public moneys for a public purpose within Art. 4, §1, c. 1 of Part II of the Constitution as held in *Opinion of the Justices*, 320 Mass. 770.

New provisions for priority among veterans and for extension of benefits to wives, mothers and dependents of veterans were held not to change the result. It was further held that the validity of the act was not affected by omission of a requirement for the elimination of unsafe and unsanitary units substantially equal in number to the number of new units since a veterans' act stood upon a different footing from a general housing law.]

Workmen's Compensation . . . veteran's subsistence allowance paid deceased during on-the-job training constitutes part of his "wages" in determining compensation award under Arkansas Workmen's Compensation Law under

which "wages" include gratuities received from others with employer's knowledge.

■ *Wood Mercantile Co. v. Cole*, Ark. Supreme Ct., March 15, 1948, Holt, J. (Digested in 16 U. S. Law Week 2492, April 13, 1948.)

At the time appellee's husband was accidentally killed in the course of his employment as a welder for appellant company, he was receiving a beginning wage of \$50 per month and a veteran's subsistence payment from the government of \$90 per month during his on-the-job training. In computing the amount of compensation that should be awarded appellee under the Arkansas Workmen's Compensation Law, the question arose as to the base amount of the deceased's average weekly wage. Appellant, contending that the compensation award should have been \$7.50 per week, based upon a monthly wage of \$50, appealed from the circuit court judgment allowing compensation at the rate of \$20 per week on a basic total wage of \$140 per month.

The Court affirmed the judgment and held that the \$90 subsistence paid deceased by the government in its on-the-job training program was a part of the wage contract and

therefore must be regarded as part of his earnings and wages in determining the amount of compensation to be paid appellee. It was the Court's opinion that, under §2 (h) of the Compensation Law, providing that "wages" shall include "gratuities received in the course of employment from others than the employer when such gratuities are received with the knowledge of the employer", the \$90 subsistence allowance became part of his wages since it was received by the deceased with his employer's knowledge. In fact, the employer was said to have benefited directly from the government's payment to the deceased.

The Court noted that in New York, where there are no provisions in the compensation law which include "gratuities" in the term "wages", the courts have nevertheless included tips and similar gratuities as part of the wage when computing compensation. The Court did not agree with the argument that since veterans subsistence payments were unheard of in 1939 they did not constitute "gratuities" within the meaning of the act.

Further Proceedings in Cases Reported in this Division.

The following action has been

taken in the Supreme Court of the United States:

Certiorari Granted, April 19, 1948: *U. S. v. Urbeteit*—Drugs and Druggists (34 A.B.A.J. 63; January, 1948); *Kordel v. U. S.*—Drugs and Druggists (34 A.B.A.J. 63; January, 1948).

Certiorari Denied, April 19, 1948: *Rice v. Elmore*—Elections (33 A.B.A.J. 1047; October, 1947).

The following action has been taken by the United States District Court for Indiana, N.D., March 27, 1948:

Temporary injunction issued: *Evans v. International Typographical Union*—Labor Law (34 A.B.A.J. 322; April, 1948).

The Second United States Circuit Court of Appeals, on March 15, 1948, reversed and remanded with directions to dismiss the complaint: *Howard v. Wilbur*—Attorney and Client (33 A.B.A.J. 615; June, 1947; supra—Appeal, page 503 of this issue).

The New York Supreme Court, App. Div., 1st Dept., on April 13, 1948, reversed order dismissing proceeding on the merits: *Matter of New York County Lawyers Assn. v. Bercu*—Attorney and Client (33 A.B.A.J. 496; May, 1947; see page 519 of this issue).

■ One hundred and forty million men and women, each unique and infinitely precious in the eyes of God, seek refuge in the temple of American law. They look for protection against the abuses of arbitrary power whether by individuals, ruthless minority groups, or by the clamorous majority in a vast continental democracy. If they find that the foundations of that structure have been subtly undermined so that it no longer gives them assurance of protection; if they see with newly-opened eyes that the law administered therein is merely the embodiment of arbitrary force, of command and not of reason or enduring principles of justice, they will shatter it to bits and revert to primeval chaos or insurrection organized. And that catastrophe will occur if a pragmatic philosophy dominates the law, particularly American constitutional law. For, the basic philosophy of the Constitution gone, only an empty shell of verbiage remains. That discovered, the public opinion which supports the law, the Constitution and the Courts, will turn against them for their mockery of justice and seek other gods—perhaps the gods of force.

—Concluding paragraph of an address by Ben W. Palmer, of the Minnesota Bar, on "The Natural Law and Pragmatism", published in full in the March issue of *Notre Dame Lawyer*.

Practising lawyer's guide to the current LAW MAGAZINES

ADMINISTRATIVE LAW—*"Economic Aspects of Radio Regulation"*: In the April number of the *Virginia Law Review* (Vol. 34—No. 3; pages 253-304), Edwin Conrad presents a clear and critical analysis of the trend of radio control away from regulation confined largely to the technical aspects of the field and toward more economic control impinging on the business practices of the radio industry. Conceding that the chain-broadcasting and multiple-ownership regulations of the FCC are well-grounded in the Federal Communications Act, he contends that in the application of these rules and of the policies outlined in the so-called "Blue Book" and in the exercise of its discretionary power in granting licenses and renewals, the FCC is attempting to exercise a control over business practices and program content never intended by Congress when it enacted the FCA. He is strongly of the opinion that if the "Blue Book" policies of the FCC are sustained in the Courts, we shall suffer the transformation of radio from a free system to one of government control, including control over the freedom of public information and opinion. (Address: *Virginia Law Review*, Charlottesville, Va.; price for a single copy: \$1.25.)

ADMINISTRATIVE LAW—*"Effect of the Administrative Procedure Act on Judicial Review of Administrative Action"*: Section 10 of the Administrative Procedure Act, which provides for judicial review of the action of federal administrative bodies, has been the subject of considerable praise, criticism and question. Critics have charged that its provisions will inevitably involve ad-

ministrative agencies in endless litigation. Others who do not look with favor on judicial review anyway have indulged in wishful thinking (or at least writing) to the effect that Section 10 only restates in precise language the scope and grounds of judicial review as they have been contained in various statutes and interpreted by the Supreme Court. The intent of Congress to afford substantial and plenary review was stated by Senator Pat McCarran, Chairman of the Senate Committee which sponsored the Act, in 32 A.B.A.J. 827; December, 1946. Frank Hinman, Jr., a Research Fellow in the Institute of Government at the University of Utah, enters the controversy with an article in the April issue of the *Rocky Mountain Law Review* (Vol. 20—No. 3; pages 267-279). While conceding that Court decisions interpreting Section 10 are thus far too few to enable definitive conclusions, the author aligns himself with those who urge that the availability of review of administrative action will probably not be greater under Section 10 than it was prior to the Act. He thinks that the degree or scope of judicial review of agency action may prove to have been broadened by Section 10, both as to the law and the facts. (Address: *Rocky Mountain Law Review*, University of Colorado School of Law, Boulder, Colo.; price for a single copy: \$1.25.)

ANTI-TRUST LAW—*Monopolies—"Significance of the American*

Tobacco Company Case": That neither proof of actual exclusion nor of exertion of power to exclude existing or potential competitors is essential to the crime of monopolization under the Sherman Act appears to have been determined by the United States Supreme Court in *American Tobacco Company v. U. S.*, 328 U. S. 781 (1946). The application in this case of traditional anti-trust policy to the conditions prevailing in the tobacco industry, where there are only a few sellers and their products are differentiated, is analyzed by Wallace C. Murchison, of the North Carolina Bar, in the February issue of the *North Carolina Law Review* (Vol. 26—No. 2; pages 139-172). He concludes that under the decision, unanimity of action in industries characterized by "monopolistic competition" may be held to show a "conspiracy" in illegal restraint of trade and that uniformity of prices and the custom or practice of following a "price leader" may likewise be held to constitute evidence of an understanding and agreement among all producers to fix prices by tying them to the price movements of the "leader". (Address: *North Carolina Law Review*, Chapel Hill, N. C.; price for a single copy: 80 cents.)

ANTI-TRUST LAWS: *"Insurance and the Anti-Trust Laws—A Problem in Synthesis"*: In a thought-provoking article in the January issue of the *Harvard Law Review* (Vol. LXI—No. 2; pages 246-273) George K. Gardner, Professor of Law, Harvard Law School, discusses the implications of the *South-Eastern Underwriters* decision, 322 U. S. 533 (1944), and the problem it poses for the insurance business. Approach-

Editor's Note

Members of the Association who wish to obtain any article referred to should make a prompt request to the address given with remittance of the price stated. If copies are unobtainable from the publisher, the *Journal* will endeavor to supply, at a price to cover cost plus handling and postage, a planograph or other copy of a current article.

ing the problem from the point of view of an organization formed for the purpose of breaking the monopoly described in the *South-Eastern* indictment, Professor Gardner concludes that, although the sustaining of the boycotting charge benefits such an organization in securing reinsurance, the sustaining of the rate-fixing charge threatens it with a return of the evils of unrestrained competition—rate wars and the irresistible pressure to reduce reserves below the level sufficient to cover losses. Federal and State legislation designed to meet this problem results merely in the shifting of the control of insurance rates from a commercial system to a political system. In the author's opinion, neither legal regulation of insurance rates nor the future use of the federal anti-trust laws to break up rate-fixing agreements will do much towards reducing insurance rates. It is Professor Gardner's conclusion that the problems thus presented for the insurance industry are merely an illustration of the larger problems raised by the modern trend toward a cooperative world economy. Theoretical and philosophical in approach and point of view, this article will probably not have too much appeal for the practicing lawyer confronted with specific legal problems in the insurance field. (Address: Harvard Law Review, Cambridge, Mass.; price for a single copy: \$1.10.)

COMPARATIVE LAW—Unfair Competition and Trade-Marks—“Trade-Mark Protection of American Firms in Argentina”: There is a basic difference between the theory of trade-mark protection under the common law and the civil law. The former, following the so-called “declarative theory”, makes first use, not the registration, of the trade-mark within the jurisdiction the decisive factor; the first registrant prevails over the first user under the “constitutive theory” of the civil law. Lawyers trained under the common law are often surprised, and sometimes embarrassed, when they encounter trade-mark problems in

European and South American countries where the constitutive theory is recognized. In Argentina especially, numerous American corporations have been parties to trade-mark proceedings and litigation. Six recent Argentina trade-mark or trade-name cases involving American firms are outlined in the April issue of the *George Washington Law Review* (Vol. 16—No. 3; pages 342-349) by John Wolff, who over the years has made some noteworthy contributions to the available writings on unfair competition and trade-mark law. The extreme importance of registering and maintaining the registration of trade-marks which are or might possibly in the future be used in Argentina is stressed. Also mentioned are several interesting sidelights on the Argentine law. His conclusion, which more than a few “realists” who accentuate other factors will challenge, is that “where legitimate interests of American corporations have remained unprotected, it has been due to their lack of familiarity with Argentine law”. (Address: George Washington Law Review, Washington, D. C.; price for a single copy: \$1.00.)

CONSTITUTIONAL LAW—Rights of Persons and Property—“The Natural Law and Pragmatism”: The March issue of *Notre Dame Lawyer* (Vol. XXIII—No. 3; pages 313-341) contains the profound and sharply admonitory address of Ben W. Palmer, of the Minnesota Bar (Minneapolis), member of the Advisory Board of the JOURNAL, on “The Natural Law and Pragmatism”, before the Natural Law Institute held at Notre Dame University. Those who have read Mr. Palmer's occasional contributions to our columns on this vital issue (see particularly “Defense Against Leviathan”, 32 A.B.A.J. 328, June, 1946; “Reply to Mr. Charles W. Briggs”, 32 A.B.A.J. 635, October, 1946; and “Liberty and Order: Conflict and Reconciliation”, 32 A. B. A. J. 731, November, 1946) will be profited by obtaining, reading and preserving this more comprehensive presentation of his

views as to the grave dangers which threaten our Constitution, our Courts, our system of law, our free institutions and the rights and liberties of our people, from the insidious ascendancy of “pragmatism” in some law schools and some Courts. Practically all of the material in this noble address will be new to our readers. (Address: Notre Dame Lawyer, Box 185, Notre Dame, Ind.; price for a single copy: \$1.00.)

CORPORATION LAW—Securities—“Corporate Mortgage Bonds and Majority Clauses”: Since 1879 English and Canadian indentures have frequently contained provisions, commonly called “majority” clauses, enabling a specified percentage of the security holders to modify the rights of the class, including the principal and interest obligation of the corporate debtor. With rare exceptions, “majority” clauses allowing modification of the principal and interest obligations of a corporate debtor were not accepted in the United States until recent insistence by the Interstate Commerce Commission that they be included in the new mortgages of railroads emerging from Section 77 reorganization. To ameliorate the inadequate understanding of the incidence and operation of such clauses in the United States is the purpose of an article by De Forest Billyou, of the New York Bar, in the February number of the *Yale Law Journal* (Vol. 57—No. 4; pages 595-612). He discusses the reluctance of the New York Stock Exchange to grant listing of bonds subject to modification as to principal or interest, the negotiability of bonds subject to “majority” clauses, the effect of the requirements of the Trust Indenture Act of 1939 that the indenture shall provide that the right of a security holder to receive payment of principal and interest on or after the respective due date shall not be impaired or affected without his consent, “majority” clauses and the “absolute priority” doctrine, and the statutes proposed by the Interstate Commerce Commission to incorporate “majority” clauses in most

railroad obligations. (Address: Yale Law Journal, Yale Station, New Haven, Conn.; price for a single copy: \$1.00).

EVIDENCE—"*The Uniform Business Records as Evidence Act*": After discussing the historical background of the "regular entries" exception to the hearsay rule (i.e., the shopbook rule and the entries made in the regular course of business rule), Gerald J. Norville, of the Oregon Bar (Portland), in the April issue of the *Oregon Law Review* (Vol. XXVII—No. 3; pages 188-233), compares the Uniform Business Records as Evidence Act, now in effect in twelve jurisdictions, with the Model Act which is now in effect in New York and which became the model for the present federal statute. For convenient treatment of problems encountered in cases interpreting the Uniform and Model Acts, the author confines his discussion to hospital records, public, official or semi-official records, and private business records. This part of the article is well organized and extensively documented and should prove to be of much help to trial lawyers. (Address: School of Law, University of Oregon, Eugene, Ore.; price for a single copy: 75 cents).

FEDERAL PROCEDURE—*Waiver of Venue*—"The Aftermath of the *Neirbo* Case": The "waiver of venue" doctrine laid down by the Supreme Court in *Neirbo Co. v. Bethlehem Shipbuilding Corp., Ltd.*, 308 U.S. 165, is the subject of an editorial comment in the January-February issue of the *Illinois Law Review* (Vol. XLII—No. 6; pages 780-793). Various aspects of the doctrine are discussed in the light of the more recent decisions of the lower federal Courts, including questions as to the applicability of the doctrine to causes of action arising outside the State of the forum, to suits arising under federal laws, and to suits involving foreign corporations doing business in a State without complying with its statutory requirements for appoint-

ment of an agent for service of process. In addition, certain limitations on the scope of the doctrine are pointed out; and the suggestion is made that Congress should "amend the Judicial Code to allow proper venue against foreign corporations either where they are doing business or wherever it is 'reasonable' to subject them to suit". (Address: Illinois Law Review, Northwestern University Law School, Chicago 11, Ill.; price for a single copy: \$1.00.)

GOVERNMENT CONTRACTS—"Damages for Delays in the Law of Government Contracts": In another of several analyses of operations under government contracts, Leslie L. Anderson, of the Minnesota Bar, discusses the standard forms of delay and damages provisions of government construction and supply contracts, in the February issue of the *Southern California Law Review* (Vol. XXI—No. 2; pages 125-153). He concludes that, as construed by the Courts, such contract provisions should be revised so as to obviate risks and injustices which now confront bidders. (Address: Southern California Law Review, 3660 University Avenue, Los Angeles 7, Calif.; price for a single copy: \$1.00.)

INTERNATIONAL AND COMPARATIVE LAW—"The Protection of Human Rights in British State Practice": One of the most cogent and thought-provoking publications that we have seen, for Americans who wish to be well-informed as to the long-run aspects of international and domestic issues, is *The Review of Politics*, published quarterly by the University of Notre Dame. The April issue (Vol. 10—No. 2; pages 174-190) contains a timely and highly significant article, under the above-quoted title, by George Schwarzenberger, Sub-Dean of the Faculty of Laws in the University of London. A wealth of scholarly and provocative material is in each issue. For example: The April issue contains A. Robert Caponigri's profound review, and in some respects refutation, of

Ernst Cassirer's *The Myth of the State* (Yale University Press), one of Cassirer's works which are "beginning to emerge as classics in the history of modern thought". *The Review of Politics* is a magazine which lawyers would find well worth a subscription at \$3.00 a year. (Address: The Review of American Politics, Notre Dame, Ind.; price for a single copy: \$1.00).

LABOR LAW—"The Constitutionality of Retroactive Legislation—The Portal-to-Portal Act of 1947": The Supreme Court has yet to decide the challenge to the constitutionality of the Portal-to-Portal Act of 1947 in so far as it involves retroactive application to causes of action existing as of the date of enactment. George Edward Cotter, of the New York Bar, considers in the *Virginia Law Review* (Vol. 34—No. 1; pages 26-54) this claim of retroactivity, and does so with a keen discernment of applicable principles and decisional law. He shows that constitutionality may be sustained on several grounds, the principal one being that the statutory right affected is primarily of a public rather than a private nature and may therefore be destroyed by the repeal or amendment of the statute which created it. He attacks the problem also from the point of view of the principle of law that the Congress may validate contracts which Courts have held illegal, in this case by reason of the Wage and Hour Law; the constitutional authority of the Congress pursuant to its commerce power to impair or destroy vested rights; and finally the power of the Congress to remove jurisdiction from all Courts to hear suits based on claims under the portal doctrine. (Address: Virginia Law Review, Charlottesville, Va.; price for a single copy: \$1.00).

LABOR RELATIONS LAW—"Business, Public and Private Law Considerations in Employee Profit-Sharing": The quoted title is descriptive of the contents of the comprehensive and closely referenced

editorial note in the February number of the *Harvard Law Review* (Vol. LXI—No. 3; pages 493-515). The subject is treated in a down-to-earth fashion, with emphasis on practical rather than theoretical considerations. By way of preface to the section dealing with "Business and Labor-Relations Factors", the note calls attention to the fact that the conclusions arrived at are based in large measure on interviews and correspondence with plant managers and labor union research directors and on the proceedings of the 1947 meetings of the Council of Profit-Sharing Industries. Practicing lawyers should find of particular interest the concluding sections, which deal with "Public Law Problems" and "Private Law Consequences" inherent in profit-sharing plans. Here are phases peculiarly within the lawyer's domain. A prospective as well as present user of profit or production-sharing plans, whether used as a superannuation scheme or as an incentive device, or partaking of both features, have frequent occasion to turn to the lawyer for advice as to the tax and labor law requirements and impacts. These are treated under the sub-headings: "Income Tax", "Social Security Tax", "Fair Labor Standards Act", and "Labor-Management Relations Act". Also covered are the legal rights of stockholders and the employee and employer obligations which flow out of the profit-sharing relationship. Each phase has its own pitfalls, against which the prudent practitioner will guard. The article furnishes helpful signposts for the careful traveler. (Address: Harvard Law Review, Gannett House, Cambridge, Mass.; price for a single copy: \$1.10.)

LAW REVIEW—*Establishment of Quarterly "Stanford Law Review"*: Dean Carl B. Spaeth, of the Law School of Stanford University, announces that the quarterly *Stanford Law Review* (Vol. I—No. 1) will be published for the first time this fall, with a staff headed by seven student editors selected from among thirty-four candidates by their fellow

editors of the *Stanford Intramural Law Review* which has been published as a forerunner of the quarterly. The other twenty-seven will work as members of the staff of the new review. Students from New Mexico, Colorado, Utah, Missouri, Kansas, Texas, Washington, and Minnesota, as well as California, are among the selected editors and staff. (Address: Stanford Law Review, Stanford, Calif.; price for a single copy: 75 cents.)

SECURITY DEVICES—"Chattel Security: I": The first installment of an article under the above title is in the February issue of the *Yale Law Journal* (Vol. 57—No. 4; pages 517-548). Grant Gilmore, Assistant Professor at the Yale Law School, and Allan Alexrod, Instructor at the University of Nebraska College of Law, discuss in this installment the pledge, chattel mortgage and conditional sale. The advantages and disadvantages of the chattel mortgage and conditional sale are explained and the observation is made that, although a fairly satisfactory system for financing consumer sales has been worked out over the years, the system is offensive to legal scholars. Part II, in the next issue of the same journal, will contain a discussion of trust receipt financing, an analysis of recent statutory developments relating to chattel security, and the authors' recommendations as to changes in the law. (Address: Yale Law Journal, Box 401A, Yale Station, New Haven, Conn.; price for a single copy: \$1.00.)

TAXATION—*Trusts and Estates—"Treatment of Powers of Appointment for Estate and Gift Tax Purposes"*: Ever since the taking effect of the Revenue Act of 1942 amending the provisions of the federal estate and gift tax laws in relation to powers of appointment, there has been considerable agitation and pressure for revision of the revolutionary principle, embodied in the statute, that powers of appointment may result in tax liability even though they are not exercised. A current discussion of the subject is in the *Virginia*

Law Review for April (Vol. 34—No. 3; pages 255-282), written jointly by Lucius A. Buck and George Craven, of the New York Bar, and Francis Shackelford, of the Georgia Bar. They examine the problems created by the 1942 statute, analyze the solution proposed by the Treasury Department, and offer a suggested solution of their own, which in large part calls for a return to the rules in force before 1942. (Address: Virginia Law Review, Charlottesville, Va.; price for a single copy: \$1.25.)

TAX LAW—*Federal Income Taxes—"Thin" Incorporations: Income Tax Advantages and Pitfalls"*: In the November issue of the *Harvard Law Review* (Vol. LXI—No. 1; pages 50-87), Professor M. R. Schlesinger, of the Law School of Western Reserve University, discussed problems to be faced if the incorporation of an individual proprietorship is undertaken as a tax-saving measure. The question is considered particularly in relation to the use of a formula which provides for a very "thin" capitalization. The author points out the dangers and suggests the type of advance planning which he thinks is best calculated to avoid the pitfalls. The article is both practical and meticulous for legal precision in its treatment. (Address: Harvard Law Review, Gannett House, Cambridge, Mass.; price for a single copy: \$1.10.)

TAX LAW—*Federal Income Taxes—Reorganizations*: Two expositions of tax problems in connection with corporate reorganizations are in the December-January issue of *Tax Law Review* (Vol. 3—No. 3; pages 215-247). In "Upstairs and Downstairs Merger", Kenneth Foster, of the Indiana Bar, analyzes practical problems that arise in attempted unification of two corporations where one corporation owns all or part of the stock of another. In "'Corporate Business Purposes' in Reorganizations", Harvey M. Spear, graduated from the Harvard University Law School in January, discusses the continuing uncertainty as to the precise requirements for a corporate busi-

ness purpose, in order that a reorganization may qualify as valid under the provisions of Section 112 of the Internal Revenue Code. Especially the latter could usefully be read in conjunction with the note on "Preferred Stock Dynamite" in "Tax Notes" in our March issue (page 247), since both deal to a large extent with the *Adams* and *Bazley* decisions of the Supreme Court. (Address: Tax Law Review, New York University School of Law, 100 Washington Square East, New York 3, N. Y.; price for a single copy not stated.)

TAX LAW—Charities—"The Use of Charitable Foundations for Avoidance of Taxes": The *Virginia Law Review* for February (Vol. 34—No. 2; pages 182-201) contains an informative note bearing the above title. The extent to which charitable foundations are being availed of may come as a surprise to the general reader, who may be interested to learn that they are the subject of a survey being conducted by our Association's Section of Taxation. The note is not limited to the tax aspect, but includes also an enumeration of various matters affecting the organization and management of charitable foundations. To those interested in the subject, the exposition will be found valuable as a convenient check-list of factors to be borne in mind and as furnishing a useful guide to the available literature. (Address: Virginia Law Review, Clark Memorial Hall, Charlottesville, Va.; price for a single copy: \$1.25).

TAX LAW—Taxable Corporate Income—Public Utilities—Depreciation under the Internal Revenue Code: In an article on "Continuous Existence and End of Useful Life Concepts for Depreciation under the Internal Revenue Code", in the February issue of the *Virginia Law Review* (Vol. 34—No. 2; pages 165-180), David R. Shelton, of the District of Columbia Bar, analyzes the differences between the rules

governing depreciation allowances in the determination of rates for public utility companies and the rules governing deductions for depreciation in determining the amount of taxable annual income under the Internal Revenue Code. He concludes that the Bureau of Internal Revenue has erroneously applied the public utility rate-making "continuous-existence" concept to tax cases, and contends that this error in the application of the rules governing depreciation encroaches upon the opportunity which Congress intended to grant the taxpayer to recover his investment during the useful lifetime of the enterprise in which his funds are invested. (Address: Virginia Law Review, Clarke Memorial Hall, Charlottesville, Va.; price for a single copy: \$1.25).

TORTS—"Government Liability in Tort": The February issue of the *Canadian Bar Review* (Vol. XXVI—No. 2; pages 399-414) carries an informative article by Professor Edwin Borchard, of the Yale University Law School, in which he compares the Federal Tort Claims Act, passed by the Congress in 1946, with the Crown Proceedings Act, 1947, of the United Kingdom. Both statutes render the Government subject to suits in tort. After summarizing salient provisions of the American statute, the article reviews the extent to which the relaxation of the strict rules against suing the Government has extended to States and municipalities. (Address: Canadian Bar Review, Room 505, Ottawa Electric Building, Ottawa, Ont.; price for a single copy: \$1.00).

TRADE REGULATIONS—"Price Discriminations and Their Justifications under the Robinson-Patman Act": John T. Haslett, formerly principal trial attorney of the Federal Trade Commission, is the author of an article in the February issue of the *Michigan Law Review* (Vol. 46—No. 4; pages 450-480), dealing principally with the administrative and judicial interpretation of Section

2(a) of the Robinson-Patman Act. He states that the full scope of Section 2(a) is yet to be determined by definitive decisions of Courts, considers that such interpretations may have far-reaching effects on American business, and suggests close attention to a number of matters now pending before the Federal Trade Commission. (Address: Michigan Law Review, Ann Arbor, Mich.; price for a single copy: \$1.00).

TRIAL—Instructions to Juries as Commented on by the Supreme Court of Oregon: An interesting experiment is the *Willamette Series of Legal Handbooks*, in which No. 1 has just been issued by the College of Law at Willamette University, one of the oldest law schools on the West Coast (1883), situated across the street from the Supreme Court Building in Salem, Oregon. Without entering the field of the standardized law reviews, the new series is expected to direct or canalize the research work of the law school and be of service to the Oregon Bar. To those ends, the first issue is said to contain within its sixty-one pages every instruction to a jury, given or refused, that has been commented on by the Supreme Court of Oregon. The text of both the instruction and the comment are given. As compared with the usual form-books in the field of instructions, this compilation should be useful to practicing lawyers. The new series is being financed or underwritten by the Alumni Association of the Law School. (Address: Willamette Series of Legal Handbooks, Willamette College of Law, Salem, Oregon; price for a single copy not stated).

WILLS—Execution and Revocation—"Why Not a Modern Wills Act? A Comment on the Wills Provisions of the Model Probate Code": Occasionally there is published an exposition which deals with a subject that is thought of as rather thoroughly covered by existing studies, yet the new one has a vigor of style and freshness of approach that rekindles in-

terest and opens avenues of inquiry. Of that character is the article under the above title by Professor Philip Mechem, of the University of Iowa College of Law, in the *Iowa Law Review* for March (Vol. 33—No. 4; pages 501-521). The formalities of executing and revoking wills have

been often and thoroughly explored, yet few lawyers will fail to derive entertainment and profit from this lively re-examination. Taking as his point of departure the proposed statutory provisions set forth in the Model Probate Code, Professor Mechem expounds views which may

not meet with everyone's agreement but are cogent and thought-provoking. Particularly interesting are his suggestions for legislation to fill gaps which he feels now exist in the statutory scheme. (Address: Iowa Law Review, College of Law, Iowa City, Iowa; price for a single copy: \$1.00.)

21

Tax Notes

■ Prepared by Committee on Publications, Section of Taxation, Joseph S. Platt, Committee Chairman.

Capital v. Expense—Purchase of Landlord's Estate

■ Ordinarily when a lessee buys his way out of a burdensome lease the amount paid is currently deductible for income tax purposes either as a loss or a business expense. When on the other hand the lessee takes over the property, acquiring his lessor's fee simple title, his payment ordinarily represents purchase price and as such is of course not a deduction.

The Sixth Circuit was recently confronted by a combination of these two extremes in *Cleveland-Alberton Hotel, Inc., v. Commissioner*, 48-1 USTC par. 9218 (rev'g 6 TCM 498). In 1941 the taxpayer-lessee owned a 16-story building which was built on leased ground. The lease had eighty years to run; the ground rent was \$25,000 a year. The taxpayer found the rent was excessive by \$15,000 and believed that unless it were relieved from its obligation, it might lose the building. It therefore offered to buy the fee for \$441,250 in cash; the lessor accepted and the deal was consummated. No allocation was made by the parties as between the amount paid for the lessor's estate and the amount, if any, paid to be relieved of the lessee's obligations under the lease. In its tax return the lessee deducted as

a business expense a part of its payment to the lessor "on the ground that it was paid, not for the real estate but to be relieved of an improvident rental obligation, that consideration for the release could accurately be measured by the difference between the fair value of the real estate and what it was obliged to pay therefor". The Commissioner took the position that the payment represented the purchase price of the real estate.

The Court found that if there had been no lease the land would have been worth only \$200,000, although conceding, at least by implication, that the price paid was the fair value of the fee with the lease in existence. The Court decided that, viewing the transaction realistically, the amount above \$200,000 was paid by the taxpayer in order to escape from the lease and not to acquire the fee. The taxpayer was accordingly allowed to deduct the excess, \$241,250, as an ordinary and necessary business expense.

The case was considered by the Court as one of "first impression". It has several interesting implications, particularly as respects the lessor. He has sold the land for \$200,000 and has received in addition \$241,250 as the consideration paid for a release

of the lessee's rental obligations. So considered, this additional payment would represent ordinary income rather than capital gain. This result would be consistent with the treatment accorded the lessee. On the other hand, the lessor's interest in the property subject to this lease to a responsible tenant was presumably worth the full \$441,250 paid by the lessee and could have been sold for this amount to an outsider. The entire proceeds of such a sale would clearly be entitled to capital gains treatment.

Again, if the lessee's payment may be broken down as between land and lease, perhaps the consideration paid by a third-party-purchaser of a fee simple title subject to such a lease may be similarly allocated on the purchaser's tax returns. The portion paid for the lessor interest, the right to rents, might then be recovered by amortization deductions over the period of the lease.

Whether this case will be followed and to what extent it may lead to new tax accounting concepts in the field of leases remain to be seen.

Dependency Credits and Divorce

When a divorced husband is required by court order to contribute to the support and maintenance of his children, he may not benefit income tax-wise unless he qualifies for dependency credits under Section 25 (b) of the Internal Revenue Code. This section requires that the taxpayer furnish over half of the support of each dependent claimed. In *Kotlowski*, (10 T.C.—, No. 69) the

taxpayer's eight children were living with his former wife. His contributions amounted to about three-eighths of the aggregate sums spent for their support. He claimed the right to take at least three of the children as his dependents. Under the divorce decree, however, the taxpayer's contribution was required for the support of all, no less, and the Court found no authority for allocating the children as between husband and wife.

The result would have been different presumably if the divorce decree had assigned the husband's contributions to three (perhaps five) of the children, leaving the rest to the wife. Incidentally, the wife derived no tax benefit from her payment of five-eighths of the children's support, since her income was insufficient to make use of the credits. The 1948 Act accentuates this problem somewhat by raising the credit per dependent from \$500 to \$600.

Tips Are Income

The Tax Court has finally held for the first time that tips are taxable income, contrary to a recent suggestion that they might be gifts. See Altman and Balter, "Excludibility of Tips as Gifts", 26 *Taxes* 224 (March, 1948). Although several cases have been decided upon the assumption that tips constitute income, the Tax Court apparently was first asked to decide that question in *Harry A.*

Roberts, (10 T.C.—, No. 75), which involved taxation of tips received by a taxicab driver.

The Tax Court refused to base its decision upon the Treasury Regulations (which classify tips as income) or upon any dictionary definition; the tips were held to be compensation for services rendered. Factors cited by the taxpayer were rejected: that the cab company forbade solicitation of tips and none were solicited, that the tips were given to magnify the customer's superiority feeling, and that the payment was more than was absolutely necessary. The Tax Court found no donative intent. Where an alleged gift is contemporaneous with payment for services a heavy burden lies upon one attempting to establish the gift. "The passenger tips because the taxi driver expects to receive tips, and the passenger expects to pay something extra for the service."

The Court's conclusion accords with the practice of businessmen who have been accustomed to deduct such amounts as part of their business expenses. Cf. *F. L. Bateman*, 34 B.T.A. 351.

Recent Section 107 Cases

Section 107 of the Internal Revenue Code provides for a reduced tax on compensation for personal services rendered over three or more years where at least 80 per cent of the total compensation is received in

one year. The effect, generally speaking, is to allocate the compensation to the years of service and recompute the tax accordingly.

Lloyd C. Whitman (10 T.C.—, No. 20). The taxpayer had acted for more than five years as attorney for a receiver and had received from time to time payments "chargeable against any fees which may hereafter be allowed . . . on account of . . . services, past or future". The Court overruled the taxpayer's contention that these prior payments were merely loans or advances. They were compensation for services rendered, and since the final payment was therefore considerably less than 80 per cent of the whole, Section 107 was inapplicable.

Englar Estate v. Commissioner (Prentice-Hall Tax Service, par. 72,385). Fees for about twenty years of legal services were received by the taxpayer in two years, 1931 and 1941. The taxpayer's contention that the 1941 payment should be attributed only to the years after 1931 was rejected by the Second Circuit on the ground that both payments were made under a single contingent fee contract.

William F. Knox (10 T.C.—, No. 72); *William S. Moorhead*, (C.C.H. Dec. 16, 318 (M)). The forgiveness feature of the Current Tax Payment Act of 1943 was held to apply to the tax attributable to fees allocated back to the year 1942 under Section 107.

Our Readers Can Help Us Do Our Job

■ To meet the increased costs of printing and paper supply and restore an adequate number of pages per issue, the JOURNAL has been under the necessity of increasing its revenues from advertising. To the advertisers who have been staunch friends for years and to the newcomers to our columns, we are most grateful.

We ask our readers to show their appreciation of this support by patronizing our advertisers and by men-

tioning the JOURNAL when they do so. You will find that many of our advertisers offer products or services which you could well obtain from them.

And when you write for a book or a service, buy a product, or a railroad ticket, order an article of office equipment, or obtain an insurance or indemnity policy, that has been advertised in the JOURNAL, you can help us and your Association a great deal if you mention the fact that you saw

the advertisement in the JOURNAL.

To all our readers and their business clients, we point out that the JOURNAL goes each month into the offices and homes of lawyers in practically every community in the United States and is now read closely and discussed by those who receive it. Surveys have shown that our readers constitute an unusually select body of potential buyers in every State. Our advertising rates will be sent on request.

OUR YOUNGER LAWYERS

Charles H. Burton, Secretary and Editor-in-Charge, Washington, D. C.

■ The first post-war meeting of the Fourth Circuit was held on April 17 and 18 in Raleigh, North Carolina. Arranged by the Circuit Representative for the Fourth Circuit, K. Thomas Everngam, of Denton, Maryland, the sessions were well attended. Host was James K. Dorsett, Jr., of Raleigh, North Carolina State Chairman.

Among others present were former Association President Willis Smith, of Raleigh; National Chairman T. Julian Skinner, Jr., of Jasper, Alabama; National Secretary Charles H. Burton, of Washington, D. C.; Maryland State Chairman E. Paul Mason, Jr., of Baltimore; South Carolina State Chairman Douglas McKay, Jr., of Columbia; Arthur O. Cooke, Greensboro, North Carolina; Willis Smith, Jr., of Raleigh; Howard E. Manning of Raleigh; Terry Sanford, of Fayetteville, North Carolina; William M. Cochrane, of Chapel Hill, North Carolina; Robert C. Howison, Jr. of Raleigh, North Carolina; Armistead J. Maupin, of Raleigh; and Harry Ganderson, of Greensboro, North Carolina. Virginia State Chairman, J. Calvitt Clarke, Jr., of Richmond, was unable to attend but he met with Mr. Everngam in Richmond and went over with him the program and plans for Virginia.

At the Raleigh meeting Chairman Skinner reviewed the JBC program and emphasized particularly the benefits of active participation by State groups in the Public Information Program, the Traffic Court Improvement Program, Legal Aid activities and Law Student Relations. He told of the experience of other State groups in each of these activities and pointed out that all JBC projects are not necessarily adapt-

able to each State or community. He said that it is the responsibility of each local group to examine its needs and potentialities and then to call on the JBC for help and suggestions as to how the selected projects can, in the light of the experience of other States, best be carried forward.

North Carolina members expressed great interest in the Public Information Program. Two sets of thirteen scripts each, one set explaining the value of legal services and the other discussing the United Nations, may be secured from National PIP Director, W. Carlross Morris, of Houston, Texas. Douglas McKay, Jr., indicated that in South Carolina there is much need for effective work in the legal aid field, particularly in its application to the activities of loan sharks. A survey started in South Carolina before World War II is available, but in an incomplete form. Efforts will be made to complete promptly this survey.

Members from Maryland, North Carolina and South Carolina expressed special interest in the formation of Junior or Young Lawyers' Sections in the State Bar Associations. National Chairman Skinner suggested that the State Chairmen secure a copy of the model by-laws for the organization of State groups from Elizabeth Carp, of Dallas, Texas, Chairman of the JBC Committee on Cooperation with Junior Bar Groups.

Both Circuit Representative Everngam and State Chairman Dorsett, are to be congratulated on the excellent manner in which the meeting was planned and carried out. Benefits to the Circuit activities and to the JBC as a whole are inevitable. It is hoped that similar sessions in other Circuits can be convened.



JAMES K. DORSETT, JR.
North Carolina State Chairman

JBC Convocation in Downstate Illinois

A JBC meeting for downstate Illinois, held at Springfield on March 27, was attended by National Vice Chairman Walter B. Keaton, of Rushville, Indiana. Most of the discussion looked to better organization of JBC activities in this area and the promotion of membership work. Another meeting has been scheduled by State Chairman Robert A. Stuart, of Springfield, for the latter part of May. JBC Vice Chairman Keaton, and Seventh Circuit Council Member George E. Frederick, of Milwaukee, will attend.

New Lawyers Greeted and Honored

New members of the Indiana Bar were the honor guests at an annual luncheon held at the Columbia Club in Indianapolis, on April 13, the day of their admission to the Bar. In a similar gathering, 100 new members of the District of Columbia Bar were the honor guests of the Junior Bar Section of the Bar Association of the District of Columbia at a luncheon on April 28. JBC Executive Council Member, Thomas M. Raysor, presided at the latter meeting. The new lawyers were addressed by Chief Justice Bolitha J. Laws of the United States District Court for the District of Columbia.

A Nine-Point Program Offered for Improving the Work of Courts

■ In the concluding lecture of the William W. Cook series on "Men and Measures in the Law", at the University of Michigan on April 30, Chief Justice Arthur T. Vanderbilt, of the newly-constituted Supreme Court of New Jersey, outlined a program for further improvement in the administration of justice through the Courts.

"The many problems which confront the legal profession today, in our Courts and in our government," he said, "are rendered even more acute by the world crisis which informed and competent observers have termed the greatest in history, and which threatens to engulf our civilization."

While the speaker conceded that the proposed reforms could not be achieved without "long and vigorous fighting", he expressed optimism that a long-awaited renaissance of American law would emerge from the present crisis. His nine proposals were:

1. Create a single trial Court of general jurisdiction to replace the present four types of Courts—civil, criminal, equity and probate.

2. Provide proper administrative

supervision so that judges can be relieved of innumerable details of Court operation and record keeping.

3. Adopt an improved way of selecting judges.

4. Take juries out of politics by having the jury commissioners appointed in all States by the Courts.

5. Improve the practical education of trial lawyers.

6. Simplify the rules of procedure.

7. Restore trial judges' common law powers to question witnesses, to charge the jury in their own language, and to sum up the evidence for the jury.

8. Get away from one-man decisions in appellate Courts by insisting on oral argument and eliminating the submission of cases on briefs alone.

9. Modernize and reorganize the local Courts of criminal jurisdiction such as police Courts, traffic Courts and justices of the peace. "These Courts need continuing supervision as integral parts of our judicial system if we desire to make them effective instruments of crime control and agencies for promoting respect for the law."

Chief Justice Vanderbilt first outlined what he regards as principal complaints now being made against our judicial system:

What the person engaged in a lawsuit wants is quite simple and entirely reasonable. He wants (1) a prompt and efficient trial of his case, (2) at reasonable cost, (3) in which he is represented by a competent attorney, (4) before an impartial and experienced judge in the trial Court, (5) with a jury that is a representative cross-section of the honest and intelligent citizenry, (6) with a right to review the trial Court's determination before an experienced appellate tribunal, which will decide his appeal promptly and efficiently.

The speaker declared that the State, too, has certain things which it has a right to expect from the Courts because of the effects on the public mind. "They are stated negatively because that is the way complaints usually come," he declared. They are:

A judge should, first of all, not be late in attendance at Court; and secondly, he should not be arrogant, ill-tempered or inattentive. These seem like simple matters and yet they are the cause of nine-tenths of the complaints against Courts. It is truly surprising how infrequently litigants complain of a rule of law but how often they feel aggrieved at the manner of its enforcement.

Opinion of Professional Ethics Committee

Modification of OPINION NO. 255 on Reconsideration (January 29, 1948)

(Opinion No. 255 filed December 17, 1943 [30 A.B.A.J. 170; March, 1944] and modified June 9, 1944 [30 A.B.A.J. 537; September, 1944]).

■ On reconsideration of the foregoing *Opinion* on complaint of two members of the Association immediately affected thereby, and after consideration of additional testimony, the Committee (Mr. Drinker,

Chairman, Messrs. Jackson, Leviton, Miller, White and Wuerthner; Mr. Brand not participating) adopted the following modification and addition to *Opinion 255*:

At the request of the House of Delegates, pursuant to the recommendations of its Committee on Hearings, this Committee has reconsidered the conclusions in *Opinion 255*. After further consideration, the Committee adheres to its conclusion in *Opinion 255* but is of opinion that such conclusion should not be

restricted to cases where the lawyer is able to control the selection of the listee or listees in his community or effectively influence such selection, and that the words "in his community" should be stricken out of the concluding paragraph of *Opinion 255* as amended in June, 1944. We consider that it is unethical for such a lawyer to be in a position to solicit listing in a law list upon the basis, express or implied, that the prospective listee will not be accepted unless he agrees to forward business to any indicated listee in another city. Even if he does not say this directly, the listees whom he solicits would sense the possibility of it, this being implicit in the relationship which we condemn.

Western Reserve Law School Inaugurates a Placement Service

■ To help each law student of Western Reserve University get into "the right job" in law practice, business, government work or other fields as soon as he can after being graduated will be a new task of the Placement Service of that University. Harry E. Placke, former veterans' counsellor, has been appointed placement adviser for law graduates, as was announced on May 3 by Professor Fletcher R. Andrews, acting dean of the School of Law of Western Reserve. The placement plan was worked out by the Law School faculty and a committee of the School of Law Alumni Association, headed by Horace Andrews, Cleveland lawyer. It was approved by the Alumni Association, of which J. Hall Kellogg, also a Cleveland attorney, is the president. The plans are along the lines discussed by Secretary Har-

rison S. Dimmitt, of the Harvard Law School, in our May issue (page 352).

"If the average law graduate's main problem ever was merely where to hang his shingle, that day is long past," Dean Andrews said. "The fields for lawyers are many and varied. Choice of a field is complicated by numerous factors." Many students, the alumni committee commented, have no idea how to begin seeking a job as a lawyer. "Many have gone about it as one might sell a product from door to door—simply starting in a large building at the top and calling on law firms as they found their names on office entrances. Few students are aware of opportunities for employment in other than established law firms."

Graduates often overlook the fact that even for positions not directly connected with law, many business

and industrial employers prefer law-trained personnel, Dean Andrews said. Besides the Western Reserve law school graduates who are practicing and teaching law and occupying governmental positions, he pointed out, many also hold important executive posts in business and industry. Mr. Placke will advise law students as to types of work open to them. He will furnish names, standings and sizes of law firms in any location which they wish to consider. He will guide them as to approach to prospective positions. The placement service plans to "avoid square pegs in round holes" by collecting complete data on each graduating student—including his background, academic and law school records, and references. The service will be extended to graduate lawyers who seek new opportunities.

Re-Statement or Codification of International Law Cannot Alone Bring Peace

■ "I know of no arbitration or judicial settlement that has ever failed for lack of law, and I cannot believe that codification, however useful it may be for educational purposes, will seriously affect the international situation. The fundamental problem arises not from any inadequacy of international law, but in the insistence of nations upon supposed national interests or policies to the exclusion of settlement through law and diplomacy. Unless the vague and rather theoretic world community of the past can become an actuality of paramount power, nations will continue to pursue policies deemed essential to their supposed vital interests; no changes or ameliorations in the formulation of the rules of international law can change that salient certainty.

"To bring about any such result

is more than a matter of international negotiation or politics; back of this there must be an educated opinion throughout the world, insistent that right be combined with might so that international law may have behind it forces of public opinion similar to those that have so long prevailed among the English-speaking peoples. Otherwise foreign policy is something completely amoral, since the worship of the state is exclusive of all respect or regard for a community of nations. It is because the Russians are subject to no such educated opinion that international affairs are in so sorry a predicament.

"The remedy, if any, can only be brought about by an enlightened statesmanship acting in accord with the dictates of history and within the limitations of human nature as we have known it through the centuries.

No restatement of law by jurists, or even international commissions, can be of any more practical avail than can the formulation of ideal declarations of the rights of man; to think otherwise is to cherish delusion and further frustration.

"It is useless to blame international law or to think that, even if it could be perfected from the standpoint of the theorist or jurist, we would be any better off. Unless the dominant Powers of the world, who, in the end, make international law, are willing to subordinate their own supposed immediate interests to the rule of law, it is an error to think that any such result can be brought about by lawyers and publicists—however learned and upright."

—Letter of Frederick R. Coudert in the *New York Times* for April 22, 1948.

Bar Association News

Richard B. Allen • Editor-in-Charge

New York Court Rules Against Giving of Legal Advice by Accountants

■ The New York County Lawyers' Association, the largest of local Bar Associations, won on April 12 in the Appellate Division of the New York Supreme Court for the First Department its "test suit" as to law practice by a certified public accountant. By a four-to-one vote, the Court held Bernard Bercu guilty of contempt of Court and fined him \$50 for giving tax advice to a client on a city sales tax problem.

In the Court below, Mr. Justice Shientag had denied the Association's application, substantially on the ground that Bercu did not go outside the tax law or inquire into any other law in performing his services. Having been appointed meanwhile to the Appellate Division, Mr. Justice Shientag did not take part in the hearing and decision of the Association's appeal. The majority opinion was written by Presiding Justice David W. Peck. The dissenting vote will facilitate the taking of the case to the Court of Appeals. The New York State Bar Association intervened *amicus curiae* in support of the position of the local Association; the State Association's brief was quoted from in 34 A.B.A.J. 212; March, 1948).

Judge Peck's opinion for the Court said, in part:

The accountant serves in setting up or auditing books, or advising with respect to the keeping of books and records, the making of entries and the handling of transactions for tax purposes and the preparation of tax returns. Naturally, his work and advice must take cognizance of the law and conform with the law, particularly the tax law.

The application of legal knowledge in such work, however, is only incidental to the accounting function. It is not expected or permitted of the

accountant, despite his knowledge or use of the law, to give legal advice which is unconnected with accounting work. That is exactly what this respondent did. . . .

The facts were all fixed, and the only question was what view the tax authorities, and ultimately the Courts, would take as to the years in which payment of the City's tax claims would be deductible for federal tax purpose. In short, legal advice was sought and given on a question of law.

The Court pointed out that an accountant's tax work had to "take cognizance of the law and conform with the law, particularly the tax law", but should be "only incidental" to the accounting. It is not permitted, the Court said, that an accountant should give advice on law unconnected with his accounting.

The Court added that all "necessary and desirable latitude" would be accorded to the accountant if he were allowed "jurisdiction of incidental questions of law which may arise in connection with auditing books or preparing tax returns" but were denied "the right as a consultant to give legal advice".

Edwin M. Otterbourg, chairman of the New York County Lawyers' Association's Committee on Unlawful Practice of the Law and member of our Association's Committee on the subject, argued the case against Mr. Bercu. After the decision he said that some CPA's had refused to recognize that "a shoemaker should stick to his last". He said the outcome is significant "as insuring in the public interest that advice on legal matters be offered by those who, by training and under New York law, are authorized to practice law".

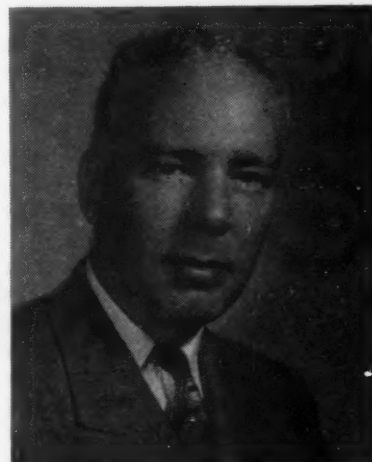
Florida State Bar Association Recommends New Rules of Civil Procedure for the State

■ With a record-breaking attendance of 510 lawyers registered, the Florida

State Bar Association held its annual meeting on April 15-17 at the Hollywood Beach Hotel in Hollywood. Counting wives and guests who attended the many social activities which added to the success of the gathering, it was estimated that there was an attendance of fully 700.

Chief action taken during the three-day session was the approval and recommendation of a new set of rules of civil practice for the State, which will be submitted to the State's Supreme Court. It is believed that the Court will adopt them with only slight modification. The rules are the result of a year's work and study by a joint Committee consisting of the Association's Committee on Civil Rules and a special Committee composed of a number of practicing attorneys and three members of the Supreme Court, appointed by the Court.

These two Committees submitted a combined report to the State Conference of Bar Delegates, which after thorough discussion and the adoption of some changes, referred the new rules to the 1948 annual meeting, which in turn adopted the report by a large majority. While retaining the distinction between law and equity, the new rules are a modification of the Federal Rules of Civil



ROBERT J. PLEUS

President, Florida State Bar Association



MACK V. TRAYNOR
President, North Dakota State Bar Association

Procedure—and their adaptation to Florida conditions.

In other actions, the Association amended its rules so as to raise the yearly dues from \$3 to \$5 for group memberships and from \$5 to \$7 for individual memberships, effective January 1, 1949.

Featured addresses at the meeting were given by Duke Duvall, of the Oklahoma Bar (Oklahoma City), who spoke on "The Art of Discovery"; Merle H. Miller, of the Indiana Bar (Indianapolis), who discussed "Tax Planning"; and George B. Carter, of the Florida Bar (Orlando), who talked on the "Lawyers' Title Guaranty Fund". William A. Sutherland, Chairman of our Association's Section of Taxation, and Allan H. W. Higgins, Chairman of the Section's Committee on Cooperation with State and Local Bar Association Tax Groups, assisted Mr. Miller in a question-and-answer period following his talk. Particular discussion was had of the recent changes in the federal income and inheritance tax law.

In the annual address, President E. Dixie Beggs called attention to the splendid work of the more than thirty Committees of the Association during the past year. Especial praise went to the Committee on Legal Institutes, which during the year held institutes in every part of the State that attracted outstanding speakers on practical and timely sub-



BENJAMIN B. TAYLOR, SR.
President, Louisiana State Bar Association

jects. He also stressed the work of the special Committee which has been studying a proposed new Constitution for the State. President Beggs pointed out that the Committee laid much groundwork for a constitutional convention, when and if called. Turning to the work of the Committee on Public Relations, he urged that "the thought 'see your lawyer' should be as thoroughly instilled in the public as the medical profession has instilled the idea 'see your doctor'". Mr. Beggs also reported that the Florida Association now has its largest membership, with more than 2200 of the State's approximately 2800 practicing attorneys enrolled in the Association.

Robert J. Pleus, of Orlando, was elected President for the ensuing year. Lewis H. Tribble, of Tallahassee, was re-elected as Executive Secretary. John W. Rowe, of Clearwater, was made President of the Junior Bar Section. A representative from each of the fifteen circuits in the State was elected to the Board of Governors, along with Mr. Beggs, the retiring President.

Louisiana Lawyers Adopt House of Delegates' Resolutions Against World Communism

■ Vigorous opposition to world Communism, culminating in the approval of resolutions outlining a remedial and active policy in the same language as was used in the

resolutions adopted on the subject by the House of Delegates on February 24 (for text see 34 A.B.A.J. 281; April, 1948), was voiced during the three-day annual meeting of the Louisiana State Bar Association at Lake Charles, April 15-17.

In urging the Louisiana lawyers to support and approve the House of Delegates' resolutions, Cuthbert S. Baldwin, of New Orleans, President of the State Association, predicted that "when the people of our nation determine . . . that Communism is inimical to and utterly in conflict with our concepts of what constitutes true democracy, our Courts, sensing that change in the views of the people, will determine and hold that anyone espousing the cause of Communism cannot seek comfort in the First Amendment and may be guilty of treason". He recommended that "the lawyers of this State and nation formulate a program designed to acquaint the people of our country with the advantages of Americanism over Communism, or over any other type of 'ism'".

At the closing session, William Roy Vallance, of Washington, D. C., Secretary-General of the Inter-American Bar Association, told members of the Louisiana Bar that they are "especially qualified to aid in promoting understanding and cooperation to advance the ties of friendship which unite this nation with its neighbors to the south".

Tappan Gregory, President of the American Bar Association, was a featured speaker at the meeting.

Benjamin B. Taylor, Sr., of Baton Rouge, was inducted as President of the Association. Henry P. Dart, Jr., and Howard J. Smith, both of New Orleans, were named as Vice President and Secretary-Treasurer, respectively. Cuthbert S. Baldwin, the retiring President, was elected as the Association's delegate to the House of Delegates.

Unanimous approval of proposals to increase the base salaries of the judges of district and appeals Courts and of members of the State Supreme Court and to support an amendment

of the State constitution so as to extend the term of office of district judges, was voted in the actions taken at the 1948 meeting.

North Dakota Bar Informs Public on Estate Planning and Taxation

■ Through efforts of the North Dakota State Bar Association, residents of that State during the past year have received information from the Bar as to estate planning and taxation and as to wills. A special panel of the State Bar has discussed estate planning and taxation at many public gatherings throughout the State as well as at assemblages of the Bar in all districts of the State. A pamphlet on wills was also published by the Association and circulated throughout the State by the banks and similar institutions.

In connection with the visit of the Freedom Train to North Dakota, the Association sponsored an essay contest, open to high school students, on the subject: "Modern Challenges to American Constitutional Principles". United States savings bonds are being given as prizes.

Mack V. Traynor, of Devils Lake, is the President of the State Bar. The other officers are: George A. Soule, of Fargo, Vice President, and William S. Murray, of Bismarck, Secretary-Treasurer. The 1947 annual meeting of the Association, held at Bismarck last August, had the largest attendance since the United States entered World War II.

The 1948 annual meeting is scheduled for August 4-6 at Grand Forks. Tappan Gregory, President of the American Bar Association, and L. E. Birdzell, vice president of the Bank of America, former judge of the State's Supreme Court and professor of law in the University of North Dakota, will be featured speakers.

Judge Robert P. Patterson Succeeds Harrison Tweed as President of the Association of the Bar

■ The May meeting of the Association of the Bar of the City of New York is its annual meeting, for the election of officers and for the consideration of yearly reports by committees which have not reported

otherwise. This year's meeting brought the retirement of Harrison Tweed after three years of vigorous service as President of the Association and the election of Judge Robert P. Patterson, former Secretary of War, as his successor.

Tweed undertook the leadership of the Association at a time when its work was suffering from the absence of younger members in war service and the inability of its older lawyers to devote the time necessary for carrying on work that was expanding under the pressure of new needs. He soon rejuvenated the Association, the atmosphere of its spacious quarters, the spirit and interest of its meetings. The schedules of meetings, lectures, forums, panel discussions, and the like, were intensified; and the energetic Paul Dewitt was brought in as Executive Secretary, to plan and organize the multiplying activities, to which Tweed gave great amounts of his own time. Today nearly all of the committee chairmen, and a preponderance of the members of committees, are lawyers well under fifty years of age; and the Association has developed the habit of debating and speaking its mind vigorously and progressively on all manner of subjects that have legal aspects; and some of its pronouncements have been at variance with those of other Bar organizations, including the American Bar Association,

on subjects such as administrative law, "civil rights", international legislation, and labor relations law.

On the social side, all sorts of new and diverting features have been introduced under the Tweed regime—cocktail parties, dinners, suppers, minstrel shows, musical comedies, revues, exhibitions of members' photography, and the like—hardly within the traditional concepts of the functions of Bar Associations. But it has all been lively and friendly, and has added interest and support for the basic work.

Born in New York in 1885 and educated at St. Marks School, Harvard University, and Harvard Law School, Tweed has had a professional and public career of great usefulness since his admission to the Bar in 1910. Along with his work as a practicing lawyer in the first-rank Milbank, Tweed firm, he has been a large factor in the work, in and outside our Association, for legal aid and for continuing education of the Bar. He is the president of the American Law Institute and a trustee of Sarah Lawrence College (Bronxville), and is a member of the visiting committee for the Harvard Law School. He entered World War I as a private and was graduated from OTS in the field artillery. On April 25 he was elected as president of the Harvard Alumni Association. In our



ROBERT P. PATTERSON
President, Association of the Bar of the City of New York



HARRISON TWEED
Retiring President, Association of the Bar of the City of New York



JOSEPH A. MOYNIHAN
President, Inter-American Bar Association

Association he has been a diligent and popular member of the House of Delegates.

The distinguished career of his successor as President of the Association of the Bar is well-known to American lawyers and people. As a practicing lawyer, a soldier in World War I, a United States District Judge, a Circuit Judge, Under Secretary of War, and Secretary of War, he has exhibited an independence of views and a fidelity to his high ideals of our profession and the public service. To carry on the Association's work at the tempo, and with the variety, developed under the leadership of Harrison Tweed is a formidable task for any lawyer and jurist returned to the Bar.

State Bar of Michigan Chooses Judge Moynihan as President of Inter-American Bar Association

■ A novel and unprecedented event in the annals of integrated State Bars took place on April 9 when the Board of Commissioners of the State Bar of Michigan met in Lansing and unanimously selected Joseph A. Moynihan, Presiding Circuit Judge of Michigan, as President of the Inter-American Bar Association. Under the constitution and practice of the latter organization, its president for a year is chosen by the Bar organization which sponsors its annual meeting for that year. The State Bar of Michigan will be the host organization for the Sixth Annual Conference of the Inter-

American Bar Association in Detroit May 22 to June 1, 1949.

The selection of Judge Moynihan was quickly confirmed by the Executive Committee of the pan-American organization. He will retain its presidency until the host association for the seventh Conference nominates its candidate upon the conclusion of the Sixth Conference, sponsored by the Michigan Bar.

A member of the American Bar Association since 1920 and long active in affairs of the organized Bar, Judge Moynihan will bring to his new post qualities of statesmanship in his professional conduct, eminence as a jurist, and humanity in his kindly demeanor and warm heart. He will contribute much as the presiding officer and executive head of the meeting of lawyers who come from all parts of the Western Hemisphere—from Canada, from the countries of Central and South America, from the West Indies, and from the United States.

Having been the Presiding Circuit Judge of Michigan since 1941, Judge Moynihan has been a member of the Wayne County Circuit Court bench since January 18, 1921, at which time he was appointed to that position by former Governor Alex J. Groesbeck. Born in Detroit in 1886, he had his schooling in that city and began the practice of law there in 1907. For years an outstanding exponent of pre-trial procedure, he has served as Chairman of the American Bar Association's Committee on Pre-Trial Procedure. In 1932 he was assigned the task of developing the pre-trial docket in the Wayne Circuit Court. He did it with marked success; the idea is being applied by Courts throughout the land and is a part of new Rules of Procedure in the federal Courts.

Judge Moynihan is a former member of the Council of the Section of Judicial Administration of the American Bar Association, and is a former director of the American Judicature Society. He is Vice President of the Detroit College of Law, a member of the Judicial Council of Michigan, and Presiding Judge of

the Michigan State Court of Claims. He received the Medal and Award from the Probus Club International as having made the greatest contribution to inter-faith and inter-racial relations for 1946.

President Gregory Addresses April Meeting of the Los Angeles Bar Association

■ President Tappan Gregory on April 29 addressed the monthly luncheon meeting of the Los Angeles Bar, at the Biltmore Bowl in Los Angeles. Representatives from the organized Bar from virtually all of the Southern California counties were present. With nearly 500 members present, this gathering broke a ten-year attendance record. Evincing familiarity with California history, President Gregory spoke of the founding of the City of Los Angeles and its transition and growth to an urban community. Speaking of the responsibilities of the profession, Mr. Gregory pointed out that the privilege of practicing law is one emanating from the people themselves, and said: "There is a corresponding responsibility that a lawyer do his utmost to serve the public broadly, faithfully, and at a minimum cost."

Emphasizing the importance of lawyer reference services now operating in Chicago, Los Angeles and New York, President Gregory said:

Heretofore, a person who never had used the services of a lawyer or who knew no lawyer, has not known which way to turn. The local Bar Associations would not make any recommendations. Now, in Los Angeles and Chicago, such a person can go to the Association, which will refer him to an attorney capable of handling the case. This attorney's name is taken from a rotating list made up of lawyers who have agreed to take such cases. The attorney will give a half-hour's time to the new client for a nominal fee. Often this is sufficient to solve his problem.

The President of our Association concluded his remarks by quoting the matchless challenge of Lord Brougham in his address on law reform before the House of Lords, to the effect that a sovereign may proudly boast that he

... Found law dear and left it cheap;

found it a sealed book, left it a living letter; found it the patrimony of the rich; left it the inheritance of the poor; found it the two-edged sword of graft and oppression; left it the staff of honesty and the shield of innocence.

New York State Bar Association Supports Tide-lands Legislation

■ President Mason H. Bigelow of the New York State Association has announced that on April 24 the Executive Committee of that Association adopted resolutions unanimously in support of S. 1988 and the corresponding House bill to confirm and establish the titles of the States to lands and resources in and beneath navigable waters within State boundaries and to provide for the use and control of such lands and resources. The resolutions, which also opposed any compromise legislation on the subject, followed substantially the lines of those adopted by the House of Delegates after debate on February 24 (for text see 34 A.B. A.J. 341; April, 1948), but introduced several specific recitals to show and support the interest of the State of New York in the enactment of the legislation.

The Executive Committee of the New York State Association is a large and representative body, corresponding to a House of Delegates for the State Bar organization.

On April 30 the House of Representatives passed and sent to the Senate, by a decisive vote of 251 to 29, the House bill supported by our Association and the New York Association. Argument for the bill was largely by lawyers of both parties in the House and along the lines of the action of the Bar Associations. It was stated in the debate that the legislation has the support of the Governors of forty-four of the forty-eight States.

When a similar bill was passed by the 79th Congress, it was vetoed by President Truman, principally on the ground that the question was then before the Supreme Court. The vote in the House on passing over the veto was 139 to 95 and the veto was thereby sustained, without Senate action. The vote in the House on April 30 was by a wide margin in

excess of the two-thirds required to pass over a veto.

In presenting the legislation to the House, its sponsors pointed out that, while the Supreme Court, in reversing the long-established law and policy, had decreed that California was not the owner of the three-mile sub-marginal belt off its coast, the Court "failed expressly to decree" that the United States was the owner.

"All agree," the House Judiciary Committee said in its report on the bill, "that Congress must act to clear up the controversy between the States and Federal government as to the resources in and beneath the navigable waters within State boundaries, if chaos is not to prevail."

Because of the cogency of the arguments stated in support of the bill, the unanimous resolutions of the New York State Bar Association are here given in full:

WHEREAS, on June 23, 1947, the Supreme Court of the United States rendered its decision in *United States v. California*, 332 U.S. 19, in which was involved the question of ownership, dominion and control over lands within the boundaries of the State of California underlying the marginal seas within the three-mile belt; and

WHEREAS, in said decision the Court held that the United States, rather than the State, has paramount rights in and power over the three-mile marginal belt, incident to which is full dominion over the resources of the soil under that water area, including oil, and that California is not the owner of such marginal belt; and

WHEREAS, the rationale employed by the Court in making such decision, and the principles enunciated therein, are such as to cause reasonable apprehension and concern that such dominion of the United States, exclusive of dominion and title of the several States and of private rights of grantees of the State therein, may be held to apply, not only to the lands under the open waters of the marginal sea, but to lands of the foreshore between the high and low water marks of tidal waters, lands underlying bays and harbors, lands underlying the Great Lakes and boundary rivers, and lands underlying interior lakes and rivers which are or may be held to be subject to the federal power to regulate navigation; and

WHEREAS, since the organization of its government on April 20, 1777, the

State of New York has claimed title and ownership to the lands underlying all waters within its boundaries deemed to be navigable at law, including the lands underlying the three-mile belt in the marginal sea, and has made numerous and extensive grants of lands under such navigable waters to municipal corporations, private corporations, and individual citizens, and the State and its grantees have made great expenditures in filling in or otherwise improving extensive areas of such under-water lands in reliance upon title thereto vested in the State or derived by grant therefrom; and

WHEREAS, the Attorney General of the State of New York, on behalf of said State and appearing as *amicus curiae*, participated in the litigation leading to the aforementioned decision and supported the contentions of the State of California therein, and has subsequently expressed his support, on behalf of the State of New York, of the legislation hereinafter described; and

WHEREAS, the decision in *United States v. California* may have a serious adverse effect on the title and ownership of the State of New York, as one of the thirteen original States, of lands underlying the three-mile belt of the marginal sea within its boundaries, and may have the effect of overthrowing long-established rules of property with respect thereto, and may seriously disturb the long-established and recognized balance and distribution of sovereign powers and proprietary interests between the several States and the United States; and

WHEREAS, there have been introduced in the Congress of the United States, at the Second Session of the 80th Congress, bills providing for the relinquishment by the United States of all claims of title and ownership to lands under navigable waters (as such title and ownership of the United States may have existed or exist in accordance with the decisions of State courts), and the confirmation of the title of the respective States to such lands underlying navigable waters within their respective boundaries while preserving to the United States its powers of regulation and control with respect to commerce, navigation, national defense and international relations to the full extent as generally recognized prior to the said decision, and declaring the preferential right of the United States to take for national defense such lands and natural resources therein upon making just compensation therefor; and

WHEREAS, the enactment of such pro-

posed legislation will remedy the cloud upon the title and interest of the State of New York and the grantees thereof in the lands underlying the marginal sea within its boundaries, created by the said decision, will prevent any future extension of the reasoning and principles of said decision to harbors, bays, the Great Lakes and interior waters, will confirm established rules of property and division of powers between the States and the United States, and thus will benefit the general national public interest; and

WHEREAS, certain amendments have been proposed to the bill, S. 1988, and have been incorporated in a companion measure, H. R. 5992, which would except from the operation of the proposed legislation the interests and control of the United States in respect of navigation, flood control and water power, and such particular exceptions from the operation of the Act are inappropriate and undesirable in an act designed to clarify questions of title;

NOW, THEREFORE, it is

RESOLVED, that the New York State Bar Association approves and urges the enactment of S. 1988 as originally introduced in the Senate, and disapproves any amendments thereto which would limit its operation by particular exceptions in the manner proposed by amendments thereto offered in the Senate under dates March 8 and March 12, 1948, and as embodied in H. R. 5992;

RESOLVED, that the officers of this Association and its Committee on Federal Legislation, or any Sub-Committee thereof, be and they hereby are authorized on behalf of this Association, to express its support of said proposed legislation as approved in the foregoing resolution and in opposition to amendments disapproved as aforesaid, and to do and cause to be done all things necessary or appropriate in pursuance of these resolutions.

Section of Bar Activities Announces Awards of Merit To Be Made for 1948

■ By action of the House of Delegates in 1938, the Section of Bar Activities was authorized to "make an award of merit to that State Bar Association which has performed during the then current year the most outstanding and constructive work, and a like award to the local Bar Association which has done the most outstanding and constructive work in its field". The House of Delegates subsequently enlarged the authority

so as to permit two awards to State Associations and two awards to local Associations divided into classes on the basis of lawyer population.

Though "without monetary value", the awards have been coveted and the competition has been keen. As an indication that mere size is not of controlling importance, the awards for 1947 were won by the Iowa State Bar Association in Group I and by the Delaware State Bar Association in Group II. Delaware has a lawyer population of less than 350, yet made a most impressive showing. The local awards were won by the Chattanooga Bar Association in Group I and in Group II by the Des Moines County Bar Association of Burlington, Iowa, with a lawyer population of less than fifty.

Forms of application and instructions may be had from the headquarters of the American Bar Association, 1140 North Dearborn Street, Chicago 10, Illinois. Entries in the 1948 contest must be filed in the same office on or before July 15, 1948. This date will enable the Committee to screen all entries in time to invite representatives of the top contenders in each class to appear before the Council of the Section in Seattle to support their claims, before the final decision is reached. Any Association may borrow copies of earlier entries from Glen R. Winters, Ann Arbor, Michigan, without expense other than mailing charges.

All Associations are urged to compete. Although all cannot win, the effort will serve as a splendid self-appraisal of the effectiveness of each organization.

Association of the Bar Defers Action on the Draft Covenant and Declaration on Human Rights

■ For the second successive meeting, the Association of the Bar of the City of New York debated at length on May 11 the report and recommendations of its Committee on International Law regarding the Draft Covenant and Draft Declaration on Human Rights. Again the outcome, after spirited debate and a welter of opposing motions, was the adoption of a motion to recommit the report,

which had the effect of postponing the Association's action until some meeting in the autumn.

The resolutions recommended by the Association's Committee were along the lines discussed in our May issue ("A Covenant of Free Nations: Shall They Agree on Basic Rights and Freedoms?", page 349) as follows:

RESOLVED, That the Association of the Bar of the City of New York considers that it would be within the treaty-making power of the United States Government under Article II of the Constitution, and appropriate under the provisions of the Charter of the United Nations, for the United States to enter into a Covenant with other governments that maintain and promote the free institutions of democracy, whereby the parties will state the fundamental freedoms, established by the Constitution of the United States and the equivalent charters of free government, upon which they are in accord and which they are prepared to maintain and to promote by joint and separate action pursuant to Articles 55 and 56 of the Charter, *provided* that such Covenant contains substantially the safeguards and limitations set forth below.

FURTHER RESOLVED, That this Association considers that, conformably to the foregoing, such Covenant should contain substantially the following safeguards and limitations:

1. That the Covenant should be prepared for the adherence of the freedom-loving nations which are prepared to observe it in full faith in their respective countries, should contain a clear and definite statement of only such rights as such nations mutually recognize and enforce, and should contain no compromises with or concessions to the ideologies or concepts of totalitarian states;

2. That the Covenant should contain such provisions as are appropriate for federal governments and will not, as to the United States, impair or derogate the reserved powers of the several States under the Constitution or the jurisdiction and powers of the Courts of the United States and the several States with respect to any matter covered in the Covenant;

3. That the Covenant should create obligations only as between the States parties thereto and the measures for implementation thereof should be limited to proceedings for appropriate remedies brought by States parties to the Covenant with respect to matters of public importance and international concern;

4. That the Covenant should not be drafted so as to be self-executing but should call for the adoption of any necessary and appropriate legislation by the member nations.

FURTHER RESOLVED, That this Association is of the opinion that the Draft Declaration on Human Rights, prepared by the United Nations Commission on Human Rights, is not a feasible or desirable promulgation by the United Nations at this time, and that this Association recommends that the project of such a Declaration be abandoned.

John E. Lockwood, Chairman of the Committee presenting the report, said that the Draft Declaration lists as rights such social and economic matters as a right to work and a right to education, and is a "confusing document" because it "mixes the freedoms with these questions of economic and social legislation", which he described as "aspirations".

The Committee's report stated its opinion to be that the following limitations should be attached to further consideration of the Draft Covenant and Declaration:

LIMITATION 1

The parties shall be only governments that maintain and promote the free institutions of democracy; the treaty shall contain no compromises with the ideologies of totalitarian states.

The Committee believes that the United States should not enter into a treaty of this kind except with nations which genuinely believe in individual rights and freedoms as understood by democratic nations. This question of freedom of the individual from state interference, his essential dignity and worth in the eyes of God and man, is perhaps the most fundamental difference between democracy and totalitarianism. No document dealing with these subjects can mean the same thing to a democracy and to a totalitarian state. There can be no meeting of the minds on this point.

To attempt to establish a treaty between nations of such divergent views would involve either the acceptance of an apparent commitment where it was clear that the parties did not mean the same thing, or worse yet, such a compromise statement of the subject as would inevitably involve retrogression from the point of view of individual freedom. The Committee believes that the United States cannot and must not be a party to such a compromise of the basic tenets

of democracy.

LIMITATION 2

A. The Covenant shall not derogate from the reserved powers of the several States of the United States.

The Draft Covenant prepared by the Human Rights Commission contains in Article 24 an express provision apparently designed to express the principle.

The Committee does not believe that the drafting of an international treaty on human rights should be made the occasion of attempting to alter the fundamental constitutional relationships of those participating nations which have a federal system. In view of its recommendation, the Committee has not passed upon the constitutional issue which would be presented if the United States should purport by treaty to alter fundamentally these relationships with respect to a matter of this sort.

B. The Covenant should not derogate from the jurisdiction and powers of the Courts of the United States and the several States with respect to the subject matter.

The Covenant as drafted does not contain provisions with regard to its implementation. The Committee believes that the Covenant should not be so drafted as to diminish the jurisdiction of local Courts to enforce human rights.

LIMITATION 3

The obligations created should only be between nations parties to the Covenant; enforcement proceedings should be limited to matters of public importance and international concern.

To suggest that the parties to such a treaty should abandon the centuries-old principle of sovereign immunity and submit themselves to legal proceedings brought by individuals or groups is a bold proposal. The Committee doubts that such a proposal would be acceptable to the nations who would be the parties to such a Covenant, particularly at the very inception of a new treaty relationship.

It also has very serious doubts as to whether the adoption of such a proposal would further the cause of human rights. The risk of a multiplicity of irresponsible international litigations, presenting issues for which an international tribunal would be ill-qualified to determine, would be great. The Committee fears that it would produce a revulsion of feeling against the cause of democracy and human freedom.

The House of Delegates of the American Bar Association has taken a similar position (34 A. B. A. J. 278, April, 1948).

LIMITATION 4

The Covenant should not be drafted so as to be self-executing but should call for the adoption of any necessary and appropriate legislation.

In the preparation of this limitation, the Committee had in mind that under the Constitution of the United States treaties are the supreme law of the land. Accordingly, unless the Covenant was so drafted as to clearly indicate the contrary, it might result in setting up in the United States two parallel but differently phrased Bills of Rights, one under the Constitution of the United States and the other under the treaty. It is the opinion of the Committee that since our own Bill of Rights has been established since the founding of the republic and the subject of interpretation by Court decisions during the ensuing century and a half, it would not add to human rights but would only create confusion to set up a parallel restatement of the same thing. In addition, there is a not inconsiderable risk that any covenant might contain provisions authorizing state interference with individual rights beyond those to which we are accustomed.

It is the expectation of the Committee that the Covenant would result in enforcement of these rights in domestic law and should obligate adhering nations to give force thereto by further legislative action, if necessary. The point of your Committee is that the Covenant should not, without further legislation, be available to private parties in the adhering countries. To the extent that the rights were already guaranteed, the new legislation would not be necessary. In view of the fact in many other countries treaties are not automatically self-executing, the limitation would place the situation in the United States on a parity with that of such other countries signing the Covenant.

THE COMMITTEE'S RECOMMENDATION TO THE DRAFT DECLARATION

In its original Resolution the Committee did make any recommendations with respect to the Declaration since it was not initially presented to us as a document having legal significance, and the time schedule was so short. However, further consideration of the terms of the Declaration led the Committee to conclude that it had, or might have, legal significance, and hence that the Committee should express an opinion with respect to it.

The Committee has expressed its disapproval of the Draft Declaration on Human Rights and has recom-

mended that the project be abandoned. The Draft Declaration sets forth a series of thirty-three articles, thirty of which purport to be a statement of "rights". The rights listed in the document run all the way from the kind of human rights and freedoms with which we are familiar in our Bill of Rights and which are also the subject of protection by the Covenant, to a number of so called social and economic rights.

From the opening of the debate it was evident that deep divisions existed among the 300 members of the Association present and that the debate would be protracted. Under

the leadership of former Judge Joseph M. Proskauer, many who had urged in San Francisco in 1945 the insertion of the "human rights" provisions in the Charter of the United Nations and supported "anti-discrimination" legislation in the State and nation, attacked the Committee's report as a backward, emasculating step. An attempt by Judge Proskauer to strike out the limitations expressed in the Committee's resolution was opposed by Murray C. Bernays, Professor Herbert Wechsler and others as well as by Chairman Lockwood

for the Committee. At one stage the meeting adopted an amendment offered by Beryl Harold Levy that the Association approve the project of a Declaration on Human Rights but that the Draft Declaration in its present form requires further study. This became of less significance when, by a vote of about two to one, the main resolutions and the whole subject were put over until fall. The improbability of 1948 action by the General Assembly was urged as one of the reasons for recommitting the report.

24

Views of Our Readers

■ Members of our Association are invited to submit short communications expressing their opinions, or giving information, as to any matter appearing in the *Journal* or otherwise within the province of our Association. Statements which do not exceed 300 words will be most suitable. The Board of Editors reserves the selection of communications which it will publish and may reject because of length. The Board is not responsible for matters stated or views expressed in any communication.

Favors More and Better "Press Releases" But Complete Honesty of Statement

■ An editorial in your January issue (page 47-48) deplores the increase in government press agents and government "press releases". I submit that the emphasis is misplaced, and that in these times when government is becoming increasingly detached from its roots—the people—the "press releases" should not be discarded but worked just ten times as hard and as effectively. More knowledge of government aims and policies—not less—is sorely needed.

It is true that "press releases" are a drug on the market and on the table at the National Press Club in Washington. They are frequently evasive—wordy apologies for bureaucratic ineptitude. The answer, however, is to improve them, making them complete, honest and simple.

When they are all these things, the press will use them and we won't have polls revealing, for example, that one out of every five persons in the United States never heard of the Marshall Plan. If they are not all these things, they will continue to find their way into the waste-baskets of a cautious press.

The *JOURNAL* editorial seems to fear that the danger of the "press release" lies in its potentiality to fool the press. Such fear involves a writing-off of the press, particularly the Washington press, at too cheap a figure. Few newsmen are actually fooled by a "phony" release.

If then we are to attack the "press release", let's attack when and because it doesn't serve its only useful purpose—the maintenance of a direct wire between those who rule and those to whom rulers are eventually accountable. Let's encourage its use,

at the same time making it clear to all public servants that there is only one long-term approach that works, and that is complete honesty of statement with no advance calculations as to how it is going to be received by press and public.

If some day our leaders should in an emergency cry in desperation for public support on some vital issue of the hour, only to have that cry met with apathetic silence, the tragedy just might be traceable to the fact that our public servants didn't fully appreciate the importance of keeping the people informed (as Sandburg says of Lincoln's state papers) "by words intended for the public and aimed straight at the masses of the people".

GORDON DEAN

Vista, California

Favors Taking Taxes Off Buildings and Increasing Taxes on Land

■ In your article on "Federal Aid to Housing" (April issue, page 270) you say that "the House of Delegates aligned our Association on the side of an affirmative and remedial policy rather than negative controversy and continued delay".

May I suggest another way to attack this problem and still avoid government control, or the use of government funds to which we all contribute. The chief obstacle at the present time to building is the high

cost of land, labor, materials and taxes. If we would, we could materially reduce two of these items—the high cost of land and taxes by taking all taxes off buildings, thereby encouraging their erection and reducing rents, and putting the taxes on land, thereby reducing the selling price of land.

We have made a step in that direction in Pittsburgh, where the tax rate on buildings has for twenty-three years been one-half the tax rate in land. It is a small step, as county and school taxes are assessed upon the old flat-rate plan. It has had some effect in forcing land upon the market and in relief to the home owner whose building is worth much more than his land, in most cases.

In this connection, I call attention to an article in the *Yale Law Journal* for December, 1947, entitled "Municipal Real Estate Taxation as an Instrument for Community Planning", which advocates such shifting of taxes. It is of course a long-range plan, and requires a gradual change. So it would not meet present emergencies, if they exist. It is, however, a matter that should be seriously considered. Were it put into effect, housing need not be the concern of the federal government. Private enterprise could take care of the situation in each locality, and we would be rid of one danger of governmental interference with its attendant expense, waste, and inefficiency.

WILLIAM E. SCHOFER
Pittsburgh, Pennsylvania

Claims for Refund from Federal Agencies Which Have Sold Surplus Property to the Claimant

I have read with great interest the exceptionally thorough article entitled "Admission to Practice: Present Regulation by Federal Agencies", by John W. Cragun, in your February issue (page 111). Information on the subject of certain claims against the United States may be of interest in that connection. I have in mind claims of a particular class—claims which have been presented in the last few years, and will continue to be presented, by thousands of claimants.

Federal agencies have always had occasion to sell property, real and personal; in connection with such sales there have always been claims. By far the most common type is the claim for a refund because of a deficiency in the quantity or quality of personal property sold by the Government. Under the Surplus Property Act of 1944,¹ Government agencies disposing of property have established refund accounts to provide for refunds on claims arising out of the sales of surplus property by the particular disposal agency.² Among such agencies are certain of those dealt with in the table accompanying Mr. Cragun's article. The Department of State has sold billions of dollars worth of surplus property in foreign areas; the Departments of the Interior and of Agriculture are only two of the agencies which have sold surplus property in the United States and in the Territories. In connection with such sales, numerous claims have been presented to those agencies; doubtless many claimants have been represented by attorneys. The sale of surplus property is a temporary, abnormal activity of those agencies. It may well be that in connection with claims arising out of such sales, the question has not been raised as to whether or not the requirements set forth in Mr. Cragun's table are applicable.

The vast bulk of claims against the Government arising out of the sale of surplus property by a federal agency have been and will be handled by War Assets Administration. Most such claims are presented in the first instance by claimants. When they are presented by a third person, WAA makes the familiar require-

ment that the third person file a power of attorney from the claimant. The procedure for presenting such claims is quite informal; to discuss the procedure in more detail is beyond the purpose of this letter.

The Surplus Property Act contains certain prohibitions on the activities of employees and former employees of disposal agencies.³ Thousands of commissioned officers were assigned to duty in agencies concerned with surplus property, and these prohibitions aroused a great deal of discussion. A now-familiar document entitled, "Memorandum Concerning Section 27 of the Surplus Property Act of 1944", was issued on November 13, 1944, by the Attorney General of the United States. From this memorandum, it is clear that Section 27 would in general be applicable only to a limited number of employees who were in most cases higher level officials. Employees without authority to ratify, approve, or authorize the disposition of surplus property, or recommend such action as part of their official duties, are not included within the scope of the section.

HYMAN J. COHEN

Washington, D. C.

EDITOR'S NOTE: Mr. Cohen was born in Boston, is a graduate of Tufts College and the Harvard Law School, and has been a member of our Association since 1935. He has practiced law in Boston and is now in practice in Washington, D. C. During World War II he served as an attorney with the War Production Board and other civilian production agencies, and subsequently was legislative and liaison attorney for the War Assets Administration.

1. Public Law 457, 78th Congress.

2. Disposition of Proceeds, Sec. 30(c)—To the extent authorized by the Board, any Government agency disposing of property under this Act (1) may deposit, in a special account with the Treasurer of the United States, such amount of the proceeds of such dispositions as it deems necessary to permit appropriate refunds to purchasers when any disposition is rescinded or does not become final, or payments for breach of any warranty, and (2) may withdraw therefrom amounts so to be refunded or paid, without regard to the origin of the funds withdrawn.

3. Practice by Former Employees, Sec. 27—No person employed by any Government agency, including commissioned officers assigned to duty in

such agency, shall, during the period such person is engaged in such employment or service, or for a period of two years after the time when such employment or service has ceased, act as counsel, attorney, or agent, or be employed as representative, in connection with any matter involving the disposition of surplus property by the agency in which such person was employed, if such person during his employment with such agency ratified, approved, or authorized the disposition of any surplus property pursuant to the provisions of this Act or recommended any such approval, authorization or ratification as part of his official duties. Any person violating the provisions of this section shall be fined not more than \$10,000, or imprisoned for not more than one year, or both.

(Continued from page 444)

been largely preserved, with some improvement in draftsmanship. The idea of a uniform rule for the areas within all States is preserved, including trial by jury, with some moderation in favor of State practice, and with the highly controversial exceptions in favor of the District of Columbia and the TVA and their variant procedures retained, which may give rise to active opposition in the Congress and the profession if the

Committee's draft is approved and transmitted by the Court. Protests of members of the Bar directed particularly against the excepting of condemnations by the government-owned TVA from the proposed uniform rule (see Walter P. Armstrong, 7 F.R.D. 383, referred to in 33 A.B.A.J. 1110; November, 1947) have apparently been unavailing.

Question may also be raised as to the desirability of placing so extensive a rule on a special subject in the Federal Rules of Civil Procedure.

Particularly if such a precedent were followed as to other subjects, the present Rules might increasingly resemble the codes of civil procedure in some States, where the provisions are so lengthy, varied and variant that it is difficult for the average practitioner to find the words for the trees.

Such questions are for the Supreme Court in June. Further comments are reserved by the JOURNAL until the Court has decided whether the draft shall be submitted to the next regular session of the Congress.

(Continued from page 453)

subordinated, but each stand on an equal plane. The independence of the judiciary, and the equality of the three great branches of government in their respective spheres, are strongly maintained. While respect is given to the opinions of other Courts at all times and controlling force accorded them when required, he does not hesitate to differ when convinced that reason and logic are against precedent. He is a strong believer in the authority of the State and federal Courts in their respective fields. The independence of the pioneer is shown by his statement in *Hawk v. Olson*, 146 Neb. 875, in holding that it was for the State Court to decide what remedy the State would afford for alleged denial of rights claimed under the due process clause of the Constitution of the United States:

It is not for us to say what constitutes a violation of the due process of law clauses of the federal Constitution when the Supreme Court of the United States has spoken on that subject with relation to the question presented. Neither is it for us to say what issues may be justiciable in an application for a writ of *habeas corpus* when that writ is sought in the federal Courts. But those are not and were not the issues presented and determined by us.

The issue here now is the same as it was when the case was initially before us, and that is, what issues are justiciable in an application for a writ of *habeas corpus* in the Courts of the State. That question is for the Courts

of this State to decide. We have the undoubted right to decide upon our own jurisdiction and the jurisdiction of the Courts of this State to which our appellate power extends.

Useful Activity in the Work of Our Association

The Chief Justice's keen interest in the improvement of the administration of justice has been reflected in his activity in the American Bar Association, of which he became a member in 1937. He worked for years on its distinguished Special Committee on Improving the Administration of Justice. In 1946-47, he was the elected Chairman of the Section of Judicial Administration. As successor to Judge John J. Parker he is presently the Chairman of the Special Committee on Improving the Administration of Justice, which is being taken into the Section, in the interest of unity and integration of work for the common objective.

Notwithstanding his heavy administrative load and in addition to writing his share of opinions of his Court, Judge Simmons has found time to write articles for publication in legal periodicals. Three of these have been published in the JOURNAL (see "Better Opinions—How?", 27 A.B.A.J. 109, February, 1941; "The Principles and a Pattern for the Peace", 31 A.B.A.J. 186, April, 1945; "Fight for Our Institutions: 'Set Ye up a Standard in the Land'", 33 A.B.A.J. 216, March, 1947). He is in demand as a public

speaker, in his own and other States, and gives considerably of his time in such tasks, as he likes to meet people, mingle with them, get their views, and communicate his own. He is a rugged and forthright exponent of American ideals of government by law and the maintenance of our constitutional republic.

Cornhuskers' Work To Improve County Government

His latest "hobby" is the putting over of a program for the education and training of high school pupils in Nebraska county government. He appeared before conventions of the American Legion and the American Legion Auxiliary in Omaha in 1947, and obtained authority to institute the program. A non-profit corporation was organized, under the robust name of "Cornhusker Boys' and Girls' County Government, Inc.". He is the president of the organization that is undertaking to set up in each of the ninety-three counties of the State a laboratory study of county government. His advice to young people is: "Don't be afraid to get dirt under your fingernails".

Judge Simmons has had a most happy home life. His wife has been the active manager of even his political campaigns. In 1946, she was selected as the typical Nebraska Mother. Both their sons served in World War II. The older son was graduated from the College of Lib-

eral Arts and the Law College of the University of Nebraska, with Phi Beta Kappa honors. After graduation, he was a special agent for the Federal Bureau of Investigation until he entered the Armed Forces. He now is practicing law in the old home town of Scottsbluff. The younger son is attending the same law college from which his father and older brother came. Their daughter, after receiving Phi Beta Kappa honors, was graduated from the State University, became personnel manager of a large manufacturing establishment, and then married.

After ten years of service in the Congress and nine years of work in the highest Court of Nebraska, Judge Simmons claims to be still a young man, in spirit and activity. Certainly he is in the prime of life, is rendering invaluable service to his State, and is capable of continuing to give greater achievements in the public interest.

A Religious Citizenship Necessary for Free Government

The pioneers who settled Nebraska had both faith and vision. They combined hard work with a belief in divine providence. But they did more. They wrote into the State Constitution this command:

The legislature shall provide for the free instruction in the common schools of this State for all persons between the ages of five and twenty-one years.

They established, within two years after the admission of Nebraska into the Union, a State University. The influence of Judge Simmons' pioneer parents and the education he received was reflected in the concluding sentences of his address at the 1946 meeting of the American Political Science Association (see "Fight for Our Institutions: 'Set Ye up a Standard in the Land'", 33 A.B.A.J. 216, March, 1947). The traditional philosophy of the Nebraska pioneer as to the relationship of religion, education, and government was stated:

Our whole governmental structure recognizes the hand of God in the affairs of man. Our basic religious beliefs and our democracy are inseparable. Just as an educated citizenship is necessary to the maintenance of free government, so a religious citizenship is necessary to maintain life and vitality in the principles upon which our free government rests.

Throughout his career, Judge Simmons has exemplified that philosophy of the vital relationship between religion, law and freedom, and has held to it as a standard by which he believes that the function-



**THE "UNUSUAL"
...OUR SPECIALTY**

LITIGATION frequently involves the unusual in valuation problems—unlisted stocks, patents, goodwill, "intangibles". We specialize in the solution of these problems.

The AMERICAN APPRAISAL Company

Over Fifty Years of Service
OFFICES IN PRINCIPAL CITIES

ing of government and the Courts should be carried on, as the best assurance that America will remain the bulwark of freedom.

Venue of Actions

The speculative fees of such actions are sufficient to attract specialists, and the interests of the employee are sufficient to entitle him to seek these specialists if he desires. If he does so, H.R. 1639 would result in the addition, in many cases, of a local counsel, thus burdening the employee with an unwanted and unnecessary expense. On the other hand, as was brought out in the hearings on H.R. 1639, there are or may be communities in which it would be almost impossible to get any local counsel who could handle the case, even if one were desired or needed.⁶

5. Statement on the floor of the House by Mr. Jennings, author of H.R. 1639, 93 Cong. Rec. 9356 (daily, July 17, 1947).

6. House Hearings, *supra* footnote 3, at pages 50, 62, 89 and 152.

H.R. 1639 Would Patently Discriminate Against the Rail Worker

But these considerations would not be decisive if it were not for the fact that H.R. 1639 patently discriminates against the railroad worker. It seems to me astonishing to contend that those who engage in the hazardous employment of railroading are not entitled to some consideration. Even more certainly they are entitled to be protected against discrimination. To enact the proposals contained in H.R. 1639 would work to the potential detriment of some 2,000,000 railroad employees and their families—for whom death or injury always ride the rails. The bill would inadvisedly and unreasonably limit the places where they or their legal representatives could bring their causes of action against railroad employers. At the same time it would restrict the injured employee more narrowly than is restricted the shipper of goods or one whose truck is demolished at a highway crossing—for such people are not touched by the bill. The railroad employee is not even given the same privileges of venue as are given the employees of other corporations. This is bald discrimination. It is true that the bill as amended in committee and as passed by the House included within its terms those non-employees who might be injured or killed by interstate railroads. But this palliative merely enlarged the area of discrimination. Such discrimination is nonetheless real even though it may include a second class of persons.

In considering this matter it must be appreciated that railroads operate their lines over extensive areas. Some railroads maintain their own hospitals where injured railroad employees are hospitalized. For example, it is customary for the southern transcontinental lines to maintain hospitals on the West coast, in Los Angeles and San Francisco. A railroad employee might live and be injured in New Mexico and be hospitalized in San Francisco. The necessary witnesses to testify to his physical condition would live in California. It would be a practical impossi-

bility to get them to come to New Mexico to testify. Normally an experienced medical specialist cannot or is very reluctant to leave his practice. Of course, testimony by way of deposition is available, but this is often an ineffective substitute and it is frequently quite expensive. The provisions of H.R. 1639, in a case of this sort, would work to the definite prejudice of the injured railroad worker. Other similar situations can be envisioned; as, for example, where necessary witnesses to the accident, such as passengers, would not be available either in the district or locality where the employee lived or where the accident occurred.

H.R. 1639 Might Operate Differently as to Those Who Should Be Treated Alike

In some cases, the provisions of H.R. 1639 might operate differently for those who should be treated alike. In the hearings on the bill, the example was given of two railroad men who live in a small railroad community and who engage in alternate runs on the same line, but who are injured at the opposite terminals of the line.⁷ This very same situation was discussed by the Chicago Bar Association in its report on H.R. 1639, to which I shall refer herein.

Ample testimony was developed in the hearings on H.R. 1639 to the effect that in many communities a distinct prejudice exists in favor of railroads and against persons bringing lawsuits against them.⁸ Even in these cases it would be necessary, un-

der proposed H.R. 1639, for the lawsuit to be tried in that community, regardless of the prejudice.

Undue Restriction of Venue of Suits in State Courts

This brings us to a third major point against the enactment of H.R. 1639: That it would unnecessarily restrict the venue of lawsuits in the State Courts. The venue statutes of most States normally provide that the lawsuit may be moved from the place where it is instituted to some other jurisdiction—(1) For the convenience of witnesses; (2) in order to serve the ends of justice; or (3) to insure an impartial trial. This is the law in the State of Minnesota (see Minnesota Statutes Ann., Sec. 542.11). Substantially the same provisions are contained in the statutes of most States. Yet H.R. 1639 lays the venue in the county or parish where the cause of action arose or where the plaintiff resides, excepting only the rare case where the defendant could not be served with process therein. Two Bar Associations—the Minnesota Bar and the Chicago Bar—objected to this phase of the bill and suggested amendments which would have left the venue within a State to the rules of that State.⁹

I think we can dismiss briefly the plea that railroads are so subject to harassment that the restrictive terms of H.R. 1639 are demanded. I have no prejudice or animus against railroad corporations. They have done the country a great service and are a vital cog in our economic machine.

7. House Hearings, *supra* footnote 3, at pages 62-63.

8. See, e.g., House Hearings, *supra* footnote 3, at pages 50-51, 84, 152 and 158.

9. The Committee on Federal Legislation of the Chicago Bar Association gave the following reasons for its position:

(1.) The county or parish of residence or accident occurrence may be one of little trial business, thus imposing considerable delay until there is a sufficient accumulation of cases to justify calling a jury.

(2.) In such county or parish there may well be no lawyer of sufficient skill and experience in personal injury cases, who is not retained by the railroad.

(3.) The county or parish of residence or accident may be one where there is a congestion of cases so that a speedy trial would be impossible.

(4.) Railroad employees are highly-paid at uniform rates for those of like grades, and the element of impaired earning value is the same in all

cases of identical injuries of employees of the same age, condition, and grade. Yet in some counties or parishes the economic conditions may be such that adequate jury verdicts could not be obtained, thus resulting in different results depending upon the chance of residence or accident occurrence.

(5.) Occasionally a judge, however honorable his motives, is by reason of previous experience, environment or otherwise, prejudiced against or in favor of personal injury cases. Plaintiffs should have some choice of forum wide enough to avoid a prejudiced hearing. Defendants are protected by appellate review or in extreme cases, possibly by change of venue.

(6.) Limitation by Congress on the venue of State Courts is an infringement of the province of the State to regulate the procedure of its own Courts, according to its own views and experience.

In connection with these objections, reference should be made to the resolution quoted in footnote 1, *supra*.

Yet, as did Mr. Justice Jackson, I reject the "rather fantastic fiction" that, generally speaking, "a widow is harassing the . . . railroad".¹⁰ Where real harassment, in fact, in a particular case, can be shown, I believe relief should be afforded and under the substitute for H.R. 1639 which is proposed subsequently in this article such relief would be available.

One further objection may be noted to H.R. 1639 in this connection. It was raised by the Multnomah County (Oregon) Bar Association (including Portland, Oregon). That group approved the *purpose* of the bill, but felt the House had overlooked the fact that the rights of seamen are also tied in with the Employers' Liability Act and that these rights are prejudiced by H.R. 1639. Under 46 USC §688, seamen suffering personal injury or death in the course of their employment may, or their personal representatives may, maintain an action for damages at law and "in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable". This incorporates that part of present section 6 of the Employers' Liability Act which states: "The jurisdiction of the Courts of the United States . . . shall be concurrent with that of the Courts of the several States . . .". And it is settled under the present law, therefore, that State courts have jurisdiction to try seamen's actions for injury or death. *Garrett v. Moore McCormack Co., Inc.*, 317 U.S. 239 (1942). H.R. 1639, however, eliminates from Section 6 of the Employers' Liability Act the portion just quoted, and inserts instead its implied equivalent (but not the express language) into Section 51 of the Judicial Code (28 USC §112). The Multnomah Bar Association pointed out that since "some State Courts have held that it is discretionary as to whether they are obliged to enforce federal statutes unless State Courts are expressly given jurisdiction, the Jennings bill should not remove from the Federal Employers' Liability Act the express provision

Factual Appraisals

Impartial Valuations of Industrial and Commercial Property. Thirty-seven years of factual appraisal service to America's more conservative business institutions.

**SOUND
COMPETENT
RESPONSIBLE**

The Lloyd-Thomas Co.

APPRAISAL ENGINEERS

4411-15 RAVENSWOOD AVE., CHICAGO

**RECOGNIZED
AUTHORITIES
ON PHYSICAL
VALUES**

that State and Federal Courts shall have concurrent jurisdiction".

This illustrates how, by "attempting to use a shotgun when an air rifle would do"¹¹, H.R. 1639 may not only result in unjust discrimination against the railroad worker and his family, but may also create new confusions and endanger the rights of other groups as well.

II. SUITS BY NONEMPLOYEES OF RAILROADS

As already pointed out, H.R. 1639 as enacted by the House broadens the coverage of the original proposal by including within the terms of the bill civil actions for injury or death against interstate carriers by rail by persons not employees thereof. The venue restrictions imposed on this class of persons are the same as those placed on railroad employees, which we have already considered. Only in the rare event when the defendant cannot be served with process in the county or district, respectively, where the plaintiff resides or the cause of action arose can the action be brought in a federal or state court at the place where the defendant is doing business.

Thus H.R. 1639 as passed by the House enlarges the area of its discrimination. This is an obvious move to mitigate the claim of discrimination against railroad-men. It has absolutely no justification. In addition to the burdens imposed on railroad workers, the bill now places a great burden on other personal injury claimants, such as railroad passen-

gers, persons hurt at grade crossings, pedestrians, and the like. We need no statistics to prove that this is a large group, whose rights are thus cavalierly impaired. As I have already indicated, there is practically no evidence to indicate that any of the Bar Associations or groups which endorsed the principle of original H.R. 1639 or its predecessors ever considered or approved this new and important aspect of H.R. 1639 as enacted. I doubt very much if any of them would express such approval if they had an opportunity. Those very lawyers who complained about the unethical practices of some attorneys under the Employers' Liability Act would find themselves so restricted that they could not secure justice for their clients. As stated by Mr. Feighan, of Ohio, a member of the House Judiciary Committee, "The right which would be given to passengers by the bill, to sue where the injury occurred would, more often than not,

10. *Miles v. Illinois Central R. Co.*, supra, footnote 2, concurring opinion, at page 706. In the House Hearings, supra footnote 3, at page 48, it was brought out that over the five-year period of 1941-45, inclusive, there were a total of 4943 railroad employees killed in the course of duty and 205,114 injured, or a total of 211,057 casualties for a five-year period. During this time, as cited by those complaining of practices under the Federal Employers' Liability Act, a total of only approximately 2500 cases arising from these accidents represented those reflecting objectionable practices. This is hardly "harassment" on such a scale as to justify the extremes of H.R. 1639. In many cases, transportation of witnesses and the like involves no real problem or expense for the railroad itself. See House Hearings, supra footnote 3, at page 112.

11. Statement by Mr. Walter, of Pennsylvania, on the floor of the House, 93 Cong. Rec. 9357 (daily, July 17, 1947).

prove to be a barren one . . .".¹²

There again, H.R. 1639 discriminates against personal injury claimants, railroader and nonrailroader alike, and in favor of the owner of property damaged or destroyed in a railroad accident, who is unrestricted by the bill in his choice of venue. In addition, the anomalous results which might ensue are almost ludicrous. A truck owner whose truck was hit at a crossing and its contents destroyed could bring a damage suit against the railroad in any proper federal or state court where the railroad was doing business.¹³ The driver of the truck, however, if he were injured would be restricted in his choice of a forum by H.R. 1639; and if the driver were the truck owner himself, he might have one venue for his personal injury action and another for his property damage suit.

Serious Constitutional Questions Are Presented by H.R. 1639

There was absolutely nothing brought out at the House hearings which would justify or compel such results as these. Indeed the absence of such testimony or findings raises a serious constitutional question. The only constitutional basis for such a provision in H.R. 1639 would be the burden or affect on interstate commerce. No evidence was presented, no question raised, in this connection. There is nothing to show that the present federal venue provisions as they deal with personal injury claimants (a problem not within the purview of the Employers' Liability Act) have resulted in any practices creating a burden on or substantially affecting interstate commerce.

Further serious constitutional issues are raised. The attempt of H.R. 1639 to regulate the venue of civil actions within a State against railroads for personal injury or death invades the province of States' rights. Such actions are not grounded on any federal statute, as are those under the Employers' Liability Act. Rather, these actions by railroad passengers, users of the highway, pedestrians, and others are based on the common law as construed and ap-

plied in the various States. Even when the suit is brought in a federal Court, that Court must apply the law of the State. *Erie R. Co. v. Tompkins*, 304 U. S. 64 (1938). Under these circumstances the attempt of H.R. 1639 to impose venue restrictions with regard to State suits for damages by non-railroad employees is of highly doubtful constitutionality, in that it invades the reserved power of the States under the Tenth Amendment. And even aside from constitutional issues, it is questionable whether Congress should attempt to dictate matters so clearly involving strictly State policy and to upset the carefully formulated ideas of the States, reflected through their statutes, as to the distribution and administration of business in their Courts.

There is also presented the constitutional question of due process. It is difficult to determine, nor did the hearings on H.R. 1639 demonstrate, any reasonable or proper basis for classifying together railroaders and non-railroaders who are personal injury claimants, and separating them from persons who may have property damage claims against railroads. Quoting Mr. Feighan's remarks on the subject: "It may be suggested that it is reasonable to treat tort actions differently from contract actions for the purpose of regulating the venue of such actions. But even if the difference in these types of actions would normally afford a reasonable basis for classifying them differently, such basis is not available here, because the classification provided for in the substitute H.R. 1639 cuts across tort and contract lines".¹⁴

I feel certain that if the members of the Bar will give these considerations their earnest attention, which they have not hitherto had the opportunity to do, they will agree that H.R. 1639 in its present form is an unacceptable piece of legislation.

III. PROPOSED SUBSTITUTE FOR H.R. 1639

I believe, however, that the difficulties and abuses engendered under the present venue provisions of the

Employers' Liability Act are sufficient to warrant a remedy. These difficulties and abuses, as pointed out earlier, were largely the result of the Supreme Court's interpretations of those provisions in the *Kepner* and *Miles* cases. In order to rectify the evil, therefore, we should amend the Act itself in such a way as to restore the situation to what it was before those decisions were rendered. We can do this by requiring the bringing of these cases under the general venue statute instead of under a special venue statute. This will vest the Courts with discretion to enjoin these suits when brought in improper forums to the same extent that such power is exercised with all other cases brought under the general venue statute. Accordingly, my proposal is to amend the second paragraph of 45 USC §56 so that it will read as follows (new matter in italics):

Under this Act an action may be brought in a District Court of the United States in accordance with the provisions of the General Venue Statute (U.S.C., 1940 edition, title 28, sec. 112, as amended) applicable to other civil suits. The jurisdiction of the Courts of the United States under this chapter shall be concurrent with that of the Courts of the several States, and no cases arising under this chapter and brought in any State Court of competent jurisdiction shall be removed to any Court of the United States.¹⁵

Under this amendment all litigants would be treated exactly alike; there would be no discrimination. An injured railroad employee could institute his action in any forum where service could be obtained on the

12. Minority Views on H.R. 1639 (House Report No. 613, Part 3), 80th Cong., 1st Sess. (1947) 3. Mr. Feighan pointed out that probably the crew and other witnesses would be at places remote from the accident and thus the expense of bringing suit there would normally not be justified. This would leave for many the only alternative the place of residence, where likewise the necessary witnesses or competent legal or medical assistance may not be procured.

13. *Neirbo Co. v. Bethlehem Shipbuilding Corp.*, Ltd., 308 U. S. 145 (1939).

14. Minority Views, *supra* footnote 12, at page 5.

15. A similar proposal was made in the House Minority Report (Report No. 613, Part 2), 80th Cong., 1st Sess. (1947), of which I was the author, and joined in by Messrs. Byrne, Lane, Gorski, Walter, Celler and Chauncey W. Reed. This proposal was defeated on the floor of the House in the debate on H.R. 1639. In this connection, see also the resolution quoted in footnote 1, *supra*.

railroad corporation, so as to remove the inequities which H.R. 1639 would force upon them. At the same time, State venue provisions are properly left undisturbed, to be regulated as State policy sees fit. The concurrent jurisdiction of State Courts in suits under the Employers' Liability Act would be preserved, thus eliminating objections such as were made by the Multnomah Bar Association with regard to seamen.

The proposed change in 45 USC §56 would do away with the basis for the *Kepner* and *Miles* decisions.¹⁶ Consequently, it would permit a railroad, where the road could actually show inconvenience, vexation or oppression, to secure an injunction prohibiting litigation in a distant forum.¹⁷ At the same time a Court of jurisdiction where a suit was instituted could upon a proper showing invoke the doctrine of *forum non conveniens* and decline its facilities to a suit that in justice should be tried elsewhere.¹⁸ "The rule of *forum non conveniens* is an equitable one embracing the discretionary power of a Court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action before it may be more appropriately and justly tried elsewhere."¹⁹ It is also now settled that this doctrine may be applied by federal Courts.²⁰ Accordingly, there would be available as a check against unrestrained and unjustified litigation in distant forums the equitable power to restrain oppressive lawsuits and the reciprocal doctrine of *forum non conveniens*, which, in the words of Mr. Justice Frankfurter are "manifestations of a civilized judicial system . . . firmly imbedded in our law."²¹

There are other beneficial results from my proposal. No constitutional questions would be raised. There would be no attempt to bring within the purview of a special federal venue statute common law actions for injury or death by persons other than railroad employees or their representatives. There would be no attempt to dictate to the States the internal regulation of their venue

laws with respect to matters which are not properly the concern of Congress.

It seems to me that such a proposal should have extensive support from the Bar, whose traditional sense of justice and fair play and deep devotion to the preservation of States' rights are matters of long record. I admit that my proposal will not wipe out all "ambulance chasing" or soliciting under the Employers' Liability Act (neither will H.R. 1639), but it will operate to restrict it so far as I believe Congress can or should go. The rest will remain for the Bar Associations and Courts, in the exercise of their own responsibilities, to correct. I am confident they will not fail.

16. Compare *Gulf Oil Co. v. Gilbert*, 67 S. Ct. 839 (1947); dissenting opinion of Mr. Justice Frankfurter in *Baltimore & Ohio R. Co. v. Kepner*, 314 U. S. 44, at 54 (1941).

17. It has generally been held that the mere grant to the State Courts of jurisdiction concurrent with the federal Courts does not deprive one State Court of the power to enjoin an oppressive suit under the Employers' Liability Act in a foreign State Court. See *Reed's Administratrix v. Illinois Central R. Co.*, 182 Ky. 455 (1918); *Kern v. Cleveland, C. C. & St. L. R. Co.*, 204 Ind. 595 (1933); *Chicago, Milwaukee and St. Paul R. Co. v. McGinley*, 175 Wis. 565 (1921); and *State ex rel. New York, C. & St. L. R. Co. v. Norton*, 331 Mo. 764 (1932).

18. See *Gulf Oil Co. v. Gilbert*, *supra* footnote 16. In this connection, see also the resolution quoted in footnote 1, *supra*.

19. *Leet v. Union Pacific R. Co.*, 155 P. (2d) 42, (Calif. Sup. Ct., 1944). See also *Blair: The Doctrine of Forum Non Conveniens in Anglo-American Law*, 29 Cal. L. R. 1 (1929).

20. *Williams v. Green Bay and Western R. Co.*, 326 U. S. 549 (1946); *Gulf Oil Co. v. Gilbert*, *supra* footnote 16; *Koster v. Lumbermens Mutual Casualty Co.*, 67 S. Ct. 828 (1947).

21. *Baltimore & Ohio R. Co. v. Kepner*, *supra* footnote 16, dissenting opinion at pages 55-56.

WILLIAM F. SEERY

70 Pine St., New York City 5, N. Y.

Staff Trained and Experienced in the

F. B. I.

Integrated Investigative Service for Attorneys
Nation Wide Coverage by former F.B.I. Agents with
Offices throughout the United States

40

MINUTE

TRANSCRIPT

CASE: *Root vs. Universal*
(Philadelphia)

DATE May 11, 1948
PAGES 293
COPIES 16
WORDS SPOKEN 64,460

TRANSCRIPT FINISHED 40 MINUTES
AFTER ADJOURNMENT

HERBERT B. SANSOM & ASSOCIATES

Official Government Court Reporters
154 Nassau Street, New York 7, N. Y.
BEekman 3-3381

DETROIT INVESTIGATIONS

We have assisted many lawyers with problems in Detroit. Thefts, activities of employees, undesirable personnel, concealment of assets. Accurate legal investigations, background information for prospective executives. Thoroughly experienced. Licensed and bonded. Nationwide Representation. Any problem handled with discretion.

WILLIAM J. QUINN CO.

763 Penobscot Bldg., Detroit 26, Mich.
Cherry 2770 or Cherry 2751

William J. Quinn, President, Former Special Agent of the F.B.I.

VERNON FAXON

Examiner of Questioned Documents
(Handwriting Expert)

Suite 1408 • 134 North La Salle Street • Telephone CENTRAL 1050 • Chicago 2, Ill.

Opinions rendered re: Handwriting, typewriting, erasures, interlineations, substitutions on wills, deeds, contracts, books of account, and all kinds of documents.

EDWIN H. FEARON

Charter Member of American Society of Questioned Document Examiners

HANDWRITING EXPERT

Scientific investigation and photographic demonstration of all facts in connection with Questioned Documents.
GRANITE BUILDING • PITTSBURGH 22, PA. • Tel. ATlantic 2732

HERBERT J. WALTER

Examiner and Photographer of Questioned Documents
Charter Member of American Society of Questioned Document Examiners

HANDWRITING EXPERT

100 NORTH LA SALLE STREET, CHICAGO 2

George B. Walter, Associate

"Thirty Years Experience"

CENtral 5186

Classified

RATES 15 cents per word for each insertion: minimum charge \$1.80 payable in advance. Copy should reach us by the 15th of the month preceding month of issue. Allow two extra words for Box number. Address all replies to blind ads in care of AMERICAN BAR ASSOCIATION JOURNAL, 1140 North Dearborn Street, Chicago 10, Illinois.

LAW LIBRARIES OR LESSER COLLECTIONS of esteemed used law books purchased. Our 32-page printed catalog, free on request, lists some used law books we have for sale, also indicates the type of material we will purchase. CLAITOR'S BOOK STORE, Baton Rouge 6, Louisiana.

THOMAS LAW BOOK COMPANY PUBLISHERS, DEALERS, IMPORTERS. We Sell, We Buy, We Exchange. In Business 64 Years. 209 N. 3rd. St. Louis 2, Mo.

UNITED STATES GOVERNMENT PUBLICATIONS at regular Government prices. No deposit—Immediate Service—Write NATIONAL LAW BOOK COMPANY, 1110—13th St., N. W., Washington, D. C.

LAW BOOKS BOUGHT, SOLD, EXCHANGED. IRVING KOTHS, Metropolitan Bldg., Vancouver, Washington.

USED LAW BOOKS BOUGHT AND SOLD. State Reports, Reporters System units, Digests Amer. Law Reports, Text-Books, Encyclopedias, etc. Correspondence solicited. R. V. BOYLE, 705-07 Leonhardt Bldg., Oklahoma City, Okla.

LAW BOOKS, NEW, USED, BOUGHT, SOLD. Request free information. Joseph Mitchell, 5738 Thomas Ave., Philadelphia, Pennsylvania.

EVERYTHING IN LAW BOOKS. GEO. T. BISSEL Co., Philadelphia 6, Pa.

LAW BOOKS BOUGHT AND SOLD: Complete libraries and single sets. CLARK BOARDMAN Co., Ltd., 11 Park Place, New York City.

BUY—SELL—TRADE LAW BOOKS, BOOKCASES, LAWYERS SERVICE COMPANY, 500 N. 19th Street, St. Louis 3, Missouri.

LAW BOOKS BOUGHT AND SOLD: Complete libraries and single sets. CECIL SKIPWITH, 215 West 7th Street, Los Angeles 14, California.

WHEN YOU HAVE A DOCUMENT PROBLEM of any kind send for "Questioned Documents, Second Edition," 736 Pages, 340 Illustrations, \$10 Delivered, also "Questioned Document Problems, Second Edition," 546 Pages, \$7 Delivered. ALBERT S. OSBORN, 233 Broadway, New York City.

"THE HAND OF HAUPTMANN," Story of Lindbergh Case by Document Expert Cited by John Henry Wigmore, 368 Pages, 250 Illustrations. Price \$5.00. J. V. HARING & J. H. HARING, 15 Park Row, New York 7, N. Y.

LOWEST PRICES USED LAW BOOKS— complete stocks on hand, sets and texts—Law Libraries appraised and bought. NATIONAL LAW LIBRARY APPRAISAL ASSN., 538 S. Dearborn St., Chicago 5, Ill.

LARGE LAW LIBRARY, INCLUDING MANY State Reports and Texts—Arkansas, Missouri, Texas, Oklahoma, Kansas. Send for complete list. The Deming Investment Company, Oswego, Kan.

LAW BOOKS—WE CAN SUPPLY THE FOLLOWING sets at this time: New York University Law Quarterly Review, Journal of Criminal Law and Criminology, Air Law Review, Notre Dame Lawyer, American Law Review, Central Law Journal, Oregon Law Review, Cincinnati Law Review, American Journal of International Law, U. S. Treasury Decisions under Internal Revenue, U. S. Interstate Commerce Commission Reports, U. S. Attorney General's Opinions, Decisions of Commissioner of Patents, U. S. Court of Claims, American Law Reports, American Maritime Cases. DENNIS & Co., Inc., 251 Main St., Buffalo, N. Y.

NEW YORK LAW LIBRARY. MC KINNEY'S, (80% new). Abbott's Digest (new—never used). Complete set N. Y. Law Reports (Official Series). N. Y. Session Laws (1777 to date). Miscellaneous other sets and texts. Also 75 oak sectional bookcases. Sacrifice for cash. No reasonable offer refused for all or any part. Must sell. Box DP

LAW BOOK SALESMEN

WANTED: EXPERIENCED LAW BOOK SALESMAN. Reply confidential. Expanding sales program. Box MEJ.

SALESMAN—WANTED—LAW BOOKS. Box MM

HANDWRITING EXPERTS

EDWARD OSCAR HEINRICH, B.S., 24 California St., San Francisco 11. Examiner of Suspected and Disputed Documents. Established 1913. Independent consulting service available concerning physical evidence as to fraud or forgery. What is the fact? Reasoned expert opinions prepared, based on demonstrable facts scientifically determined, whenever you have a questioned document of any kind, in any language.

Services comprise authentication of handwriting of deceased and missing persons; decipherment of charred, mutilated and sophisticated documents; microchemical analyses of writing materials; age determinations of writing and typewriting, etc. For typical case see *Clyne v. Brock*, 82 ACA No. 8, 1098. Impounded documents visited anywhere for study, Western States and Hawaii in particular.

Authentication problems in the field of cultural objects accepted from serious collectors and administrators of estates. Handwriting diagnosed for incapacitating states.

M. A. NERNBERG, EXAMINER OF DISPUTED DOCUMENTS. Twenty-five years' experience. Formerly specially employed by the United States Government as handwriting expert in cases involving handwriting. Law & Finance Building, Pittsburgh, Pa. Phone Atlantic 1911.

BEN GARCIA, EXAMINER OF ALL CLASSES of questioned handwriting and typewriting. 8 years of practical experience. 711 E. & C. Bldg., Denver, Colorado.

SAMUEL R. McCANN, EXAMINER OF Questioned Documents. Office and Laboratory Ward Bldg. Telephone 5723, Yakima, Washington.

ROBES

JUDICIAL ROBES—CUSTOM TAILORED— The best of their kind—satisfaction guaranteed—Catalog J sent on request. BENTLEY & SIMON, Inc., 7-9 West 36th St., New York 18, N. Y.

LAWYERS WANTED

SOUTHERN LAW OFFICE IN CITY of approximately 215,000 population has opening for lawyer with from eight to twelve years experience in general practice; must be capable of preparing cases for trial in State, District and Appellate courts; good opening for man of ability and who is capable of handling an office in which several men are associated; labor and tax experience helpful.

When answering, please give name, age, education, legal experience, whether married or single and minimum required. Firm connection will be available in one or two years, or as soon as ability is proven. References desirable, but contacts with parties will not be made until after personal conference.—Box XX

POSITIONS WANTED

ATTORNEY. HARVARD LL. B., EIGHT years practice with one of New York City's best known law firms, wants to leave the city for family reasons and seeks general legal and/or financial work in corporation in smaller city. Box NP

ATTORNEY, 34, WITH LARGE WALL Street law firm desires connection smaller community with law firm or corporation. Columbia LL. B., Ex-Naval officer. Broad experience estates and taxes. Box FH

EXPERIENCED CORPORATION LAWYER financing, labor matters, corporate reorganization, taxation, administrative law, etc., presently a member of Law Department of large corporation and member of Bars of two jurisdictions desires connection with corporation law firm on eastern seaboard. Box HS.

EXPERIENCED IN EUROPEAN LAW PRACTICE Belgium and France. Seek position with firm requiring this advantage. Age 32; unmarried. Box SJ.

CAPABLE AND EXPERIENCED ATTORNEY desires to acquire commercial collection business or to operate commercial collection department of well-established law firm. Western location preferred. Box BC.

YOUNG MATRON DESIRES CHICAGO POSITION, N. C. Bar 1945. One year experience with top N. C. firm in tax, corporation, and some general practice. Two years Law Review and excellent scholastic standing and reference. Box IH

TAX SPECIALIST SEEKS ASSOCIATION AS counsel. Co-author standard work on Federal Taxation; present head of C.P.A. firm's tax department. Experienced in every phase of tax planning and litigation. Box DA

MISCELLANEOUS

PROTECT COLOR AND TITLING ON LAW BOOKS. If you value your library at more than \$1.25 send that amount for an eight-ounce can of "COVER GLOW". If skeptical request free folder. Forbooks Product Company, 1007 Harrison Building, Philadelphia 2, Pennsylvania.

ALUMI-SHELF PRODUCTS. METAL SHELVING, all types, open face bookcases, any height, width, depth or color. Bracket shelving. Any shelving for library, office, home, school, industrial or display purpose. Library Ladders, Kitchen and Barbecue Carts. Tables of all types for outdoors, home or office usage. Phonograph Album Cabinets. Radio Phonograph Tables with Album Storage. Send us your specifications and ask for catalogs. Distributors for above products desired. ALUMINUM SHELVING CORPORATION, 500 N. 19th, St. Louis 3, Mo. Main 4313.

AIDING YOUR INVENTOR-CLIENTS. THE Inventors & Manufacturers Associates, Inc., are interested in patented and pending commercial items of merit for manufacturing and sales distribution. Our charges are only from royalties. 3 Beekman St., New York City.

BOOKCASES FOR SALE—STEWARTS, Lundstrums, Viking, Hales, Gunn, Globe-Wernicke D-104, C-11, 111, 198, 298, 398, and 598; D-104, D-124, C-11 and 111—199 and 299; Macey 811, 911, 912, all old types, light oak, dark oak and mahogany, \$6.00 per case, \$5.50 per top, \$5.50 per base. All other types \$7.50 per case, \$6.25 per top, \$6.25 per base. All are used in good condition. All prices check with order f.o.b. St. Louis, Mo. LAWYERS SERVICE COMPANY, 500 North 19th Street, St. Louis 3, Mo.

THE FINEST CLAM CHOWDER THAT YOU have ever tasted. It's Maine style with that downeast flavor. Six 15 oz. cans shipped postpaid for \$2.50 (\$2.75 west of Mississippi). Send for free folder which describes other delicious seafood products. Winston Products Company, Box 214-F, Auburn, Maine.

INVESTIGATORS

THOROUGHLY EXPERIENCED INVESTIGATORS available for civil assignments only. Excellent reference. O. K. JACKSON, 125 Kennedy Avenue, San Antonio, Texas.

SAN FRANCISCO, CALIF. COMPLETE INVESTIGATION service for attorneys. RAYMOND & HALL, 58 Sutter St., San Francisco 4.

AMERICAN JURISPRUDENCE

IS THE SOLUTION TO THE
LAWYER'S GREATEST PROBLEM

Our courts, State and Federal, have decided and have caused to be published decisions estimated to number over one million and a half. In this multitude of cases lies the law, which under the doctrine of judicial precedent governs our system.

American Jurisprudence brings you the contents of this mass of reported legal decisions in logical and classified form. Its editors have extracted from this mass of case law the principles and arranged them in text form. The result is a collection of over 400 treatises arranged alphabetically from "Abandonment" to "Zoning."

American Jurisprudence is perhaps the most widely used general treatise in this country, having been accepted by all the courts as an accurate and comprehensive treatment of the case law.

Associate Publishers

BANCROFT-WHITNEY COMPANY
San Francisco 1, California

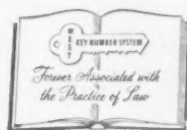
THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Rochester 3, New York

**Ever had to
Crawl Through a Window
for Lack of a Key?**

**It wasn't an experience
you would enjoy repeating**



Searching for authorities is much the same — you can “crawl” laboriously through a window toward the case law you seek, or use the West “Key Number” as the “front door” key to the treasure house of case law.



The “front door” Key to the case law you seek is found in the “West” Reporter and the “West” Digest covering the decisions of your State.

Library of Congress,
Serials Record,
Washington 25, D. C.

ut obligation

1-